

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4  
5  
6 JOHN RAPILLO and HEIDI RAPILLO,

7 Plaintiffs,

8 - against -

9 BARRY FINGERHUT,

10 DOUGLAS HOLZER,

11 FINGERHUT-HOLZER PARTNERS LLC,

12 FINGERHUT-HOLZER EQUITIES, INC.,

13 FINGERHUT-HOLZER, INC.,

14 FINGERHUT-HOLZER FUND, L.P.,

15 GEO CAPITAL PARTNERS, INC.,

16 FINGERHUT-HOLZER THE WAVERLY I, LLC,

17 FINGERHUT-HOLZER THE WAVERLY II, LLC,

18 Defendants.

19  
20 EXAMINATION BEFORE TRIAL of a Defendant,  
21 DAVID HOLZER, held pursuant to Notice in the  
22 above-entitled matter on the 28th day of March,  
23 2012, commencing at approximately, 10:15 a.m.;  
24 held at Greene Correctional Facility, 165 Plank  
25 Road, Cocksackie, New York, before Cynthia  
Schultz, a Court Reporter and Notary Public in  
and for the State of New York.

Page 2

Page 2

1 APPEARANCES:

2

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## I N D E X

## TO TESTIMONY

| WITNESS      | BY             | PAGE |
|--------------|----------------|------|
| DAVID HOLZER | MR. CONWAY     | 5    |
|              | MR. FOLKENFLIK | 119  |

## TO EXHIBITS (Retained by Counsel)

| EXHIBIT       | DESCRIPTION   | PAGE |
|---------------|---|------|
| Plaintiff's 1 | Money Transfer Document dated October 19, 2005, consisting of two pages | 91   |
| Plaintiff's 2 | Money Transfer Document Dated December 15, 2005                         | 98   |
| Plaintiff's 3 | Money Transfer Document Dated January 31, 2006                          | 99   |
| Plaintiff's 4 | Money Transfer Document Dated March 23, 2006                            | 99   |

1 F E D E R A L S T I P U L A T I O N S

2 IT IS HEREBY STIPULATED AND AGREED by and  
3 between the attorneys for the respective parties  
4 hereto that filing, sealing and certification be  
5 and the same are hereby waived.

6  
7 IT IS FURTHER STIPULATED AND AGREED that all  
8 objections, except as to the form of the  
9 question, shall be reserved to the time of the  
10 trial.

11  
12 IT IS FURTHER STIPULATED AND AGREED that the  
13 within examination may be subscribed and sworn  
14 to before any notary public with the same force  
15 and effect as though subscribed and sworn before  
16 the court.

17  
18  
19  
20  
21  
22  
23  
24  
25

D. Holzer - March 28, 2012

Page 5

Page 5

1 THIS IS THE ORAL DEPOSITION OF DAVID HOLZER,  
2 called as/on behalf of the DEFENDANT herein,  
3 produced pursuant to NOTICE on March 28, 2012,  
4 before CINDY SCHULTZ, a Court Reporter and  
5 Notary Public in and for the State of New York.

6

7 \* \* \* \* \*

8 DAVID HOLZER

9 called as the witness, hereinbefore  
10 named, being first duly cautioned and sworn or  
11 affirmed by CINDY SCHULTZ, the Court Reporter  
12 and Notary Public herein, to tell the truth, the  
13 whole truth, and nothing but the truth, was  
14 examined and testified as follows:

15 EXAMINATION BY

16 MR. CONWAY:

17

18 Q Would you please state your name  
19 for the record.

20 A David Holzer.

21 Q Mr. Holzer, good morning.

22 A Morning.

23 Q My name is Bob Conway, and I  
24 represent John and Heidi Rapiello on the matter  
25 that we have before the Court.

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D. Holzer - March 28, 2012

Page 6

Page 6

1 MR. CONWAY: Off the record.

2

3 (At which time, a discussion  
4 was held off the record.)

5

6 BY MR. CONWAY:

7 Q Mr. Holzer, how old are you?

8 A Sixty-two.

9 Q And your date of birth?

10 A

11 Q And your Social Security number?

12 A

13 Q And, Mr. Holzer, you and I have met  
14 once before. Have we not?

15 A Correct.

16 Q Here, I came up and spoke to you

17

privately?

18 A Correct.

19 Q Okay. Sir, where were you born?

20 A Manhattan.

21 Q And where did you go to school?

22 A I went to Stuyvesant High School,  
23 City College, and I went to - after that, I  
24 took some courses, about three years' worth of  
25 courses at the New York Institute of Finance.

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D. Holzer - March 28, 2012

Page 7

Page 7

1 Q Did you get a degree from City  
2 College?

3 A Yes.

4 Q In what field?

5 A History major.

6 Q What year did you graduate City  
7 College?

8 A Finally, in 1974.

9 Q And did you then move directly to  
10 the New York Institute of Finance?

11 A No.

12 Q Okay. What did you do upon  
13 graduation from college?

14 A I was working part-time at a place  
15 called Abraham Company.

16 THE WITNESS: Could I ask you  
17 one question, off the record?

18 MR. CONWAY: Certainly.

19  
20 (At which time, a discussion  
21 was held off the record.)  
22

23 MR. FOLKENFLIK: Can we  
24 keep this on the record?

25 THE WITNESS: Yeah. Sure.

D. Holzer - March 28, 2012

Page 8

Page 8

1 No problem.

2 MR. FOLKENFLIK: The deponent  
3 has been handed a copy of the  
4 Amended Complaint.

5 THE WITNESS: Okay.

6 MR. FOLKENFLIK: Sure.

7 THE WITNESS: And it had  
8 listed -

9 MR. FOLKENFLIK: Could you  
10 just start from the beginning?

11 THE WITNESS: Oh. Sorry.  
12 Yes. I received, in the mail,  
13 approximately three months ago - I  
14 can't remember, two months ago - the  
15 one-page Complaint amended, as per  
16 this (indicating), and, on it, it  
17 had my family's name on it.

18 BY MR. CONWAY:

19 Q Okay. That was the original  
20 Complaint?

21 A Well, why did I get that three  
22 months ago?

23 Q I'm not sure.  
24 Did you change address or  
25 something? Did somebody change an address?



D. Holzer - March 28, 2012

Page 9

Page 9

1           A       We changed an address only as of  
2       last Friday.

3           Q       This is the original Complaint  
4       (indicating).

5           A       I have the original Complaint.

6           Q       This is the Complaint that was  
7       amended.

8           A       Okay. This is the current  
9       Complaint and we all agree on this now?

10                  I don't care about this  
11       (indicating).

12           Q       Yes. That's it now.

13           A       Okay. I'll read it. It's Barry  
14       Fingerhut, David Holzer, Fingerhut-Holzer  
15       Partners LLC, Fingerhut-Holzer Equities,  
16       Fingerhut-Holzer, Incorporated,  
17       Fingerhut-Holzer, L.P., GeoCapital Partners,  
18       Fingerhut-Holzer The Waverly I, LLC,  
19       Fingerhut-Holzer Waverly II, LLC.

20                  We're all in agreement those are  
21       the people being sued?

22           Q       Yes.

23           A       Very good. Thank you.

24           Q       Now, the Abraham firm, in what  
25       capacity were you at the Abraham firm?

D. Holzer - March 28, 2012

Page 10

Page 10

1           A       I was an over-the-counter order  
2 clerk.

3           Q       And for how many years did you  
4 perform this service for the Abraham Company?

5           A       From -

6                   I'm trying to think. I was in the  
7 service, six months after that. From 19 - May  
8 of '69, I was a Junior in high school. Then,  
9 till September of '69, I was full-time at  
10 Abraham Company from -

11                   I had worked part-time there while  
12 I was going to school. Nineteen-seventy,  
13 summertime - I don't remember what month,  
14 actually - until 1974 when they were acquired  
15 by another firm.

16          Q       By whom were they acquired?

17          A       Lehman Brothers.

18          Q       And did you follow the  
19 Abraham firm to Lehman Brothers?

20          A       I did for a while. Yes.

21          Q       All right. And for how long were  
22 you with the Lehman Brothers?

23          A       A year or so. Maybe less, maybe  
24 more.

25          Q       And what did you do when you were

D. Holzer - March 28, 2012

Page 11

Page 11

1 affiliated with Lehman Brothers?

2 A I started trading the  
3 over-the-counter list.

4 Q Okay. And where did you go after  
5 leaving Lehman Brothers?

6 A Nineteen-seventy-five, I went to  
7 Brean Murray Foster Securities. Brean Murray,  
8 Inc.

9 Q And what was the business of Green  
10 (sic) Murray, Incorporated?

11 A General business. It was a general  
12 brokerage firm. Merchant banking, investment  
13 banking, over-the-counter trading, New York  
14 Stock Exchange trading, and asset management.

15 Q And what was your role for the firm  
16 while you were there?

17 A At the time, I was head of  
18 over-the-counter trading.

19 MR. FOLKENFLIK: At what time  
20 is this, did you say?

21 MR. CONWAY: Nineteen-seventy  
22 -five.

23 MR. FOLKENFLIK: From the  
24 beginning.

25 MR. CONWAY: Right.

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D. Holzer - March 28, 2012

Page 12

Page 12

1 BY MR. CONWAY:

2 Q You were head of trading from 1975?

3 A No. I was the head of  
4 over-the-counter trading.

5 Q Head of over-the-counter trading.  
6 Okay.

7 Do you recall what your earnings  
8 were at the time? Best estimate.

9 A Maybe, 40,000 a year.

10 Q And for how many years did you  
11 continue with Green Murray, Incorporated?

12 A Brean, B-r-e-a-n Murray.

13 Q Brean, with a "B"?

14 A Brean.

15 Q Brean, with a B. Okay. I thought  
16 you said Green. Okay. Sorry.

17 And for how long were you with  
18 Brean Murray?

19 A Twenty-eight years.

20 Q And what was your highest position  
21 at Brean Murray?

22 A Partner in charge of all capital  
23 markets.

24 Q And what was your highest rate of  
25 salary in that capacity?

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D. Holzer - March 28, 2012

Page 13

Page 13

1 A I -

2 You know what? I take the fifth.

3 Q All right.

4 Are we talking, like, talking in  
5 excess of a hundred?

6 A I don't see the relevance. I take  
7 the fifth.

8 MR. FOLKENFLIK: Just to  
9 advise the witness, the Fifth  
10 Amendment isn't a privilege as to  
11 relevance. It's a privilege as to  
12 possible incrimination.

13 THE WITNESS: Well, what if I  
14 think I'm possibly incriminating  
15 myself?

16 MR. FOLKENFLIK: Well, you  
17 need to have a basis for that.

18 THE WITNESS: And the basis -  
19 I have to explain the basis to you?

20 MR. FOLKENFLIK: Not  
21 necessarily. But, for 20 years ago,  
22 it wouldn't matter.

23 A What's the question?

24 Q What were your highest earnings?

25 A Approximately, 800,000 a year.

D. Holzer - March 28, 2012

Page 14

Page 14

1 Q All right. And were you married at  
2 the time?

3 A Correct. I was.

4 Q To whom were you married?

5 A Leslie Holzer.

6 Q And when and where did you marry  
7 Ms. Holzer?

8 A I married her September 6th, 1970;  
9 Lincoln Park Jewish Center, Yonkers, New York.

10 Q And do you have any children?

11 A Three.

12 Q Their names and ages, please.

13 A Jennifer Holzer, 36; Douglas  
14 Holzer, 32; Joshua Holzer, 26.

15 Q You're talking faster than I can  
16 write.

17 Jennifer's 36?

18 A Correct.

19 Q And the next?

20 A Douglas Holzer, 32; Joshua Holzer,  
21 26.

22 Q All right. Those are their ages  
23 now?

24 A Didn't you ask me now?

25 Q Yes.

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D. Holzer - March 28, 2012

Page 15

Page 15

1 A Okay. I'm giving you now.

2 Q Good. Now, during the period of -

3 MR. FOLKENFLIK: If I may  
4 suggest to the witness. Obviously,  
5 there are reasons why you might want  
6 to conclude this as quickly as  
7 possible. So, less dueling over the  
8 questions and simple yes or no  
9 answers would accomplish that.

10 THE WITNESS: Okay. I'll try  
11 my best.

12 BY MR. CONWAY:

13 Q We haven't any interest in  
14 prosecution or any other thing like that.

15 A I understand what you're doing  
16 here, and I'll try to answer as succinctly and  
17 rapidly as possible.

18 Q Good.

19 MR. FOLKENFLIK: It's for  
20 your own benefit.

21 BY MR. CONWAY:

22 Q Now, do you know who the principals  
23 of Brean Murray were?

24 A They changed a lot over the years.  
25 I was a principal for all those years.

D. Holzer - March 28, 2012

Page 16

Page 16

1 Brean Murray, himself, was a  
2 principal for all those years.

3 Jerome Barry was a principal for  
4 all those years.

5 And then there was interchangeable  
6 pieces over the whole period of time.

7 Q Were you an equity holder for any of  
8 those years?

9 A Correct.

10 Q And how large an equity did you  
11 hold?

12 A I'm the third largest equity  
13 holder.

14 Q How large, what percentage?

15 A Oh, I don't know.

16 Q Best estimate.

17 A Probably, the highest percentage  
18 was probably 27, 25 per cent. Somewhere  
19 around there.

20 Q Now, when did you stop working for  
21 Brean Murray?

22 A I don't recall the actual date.  
23 Two-thousand-and-two, three. I don't even  
24 recall.

25 Q During the period of your



D. Holzer - March 28, 2012

Page 17

Page 17

1 involvement with Brean Murray, was your wife  
2 employed outside the home?

3 A No.

4 Q Did she participate in the Brean  
5 Murray business in any way?

6 A No.

7 Q Saleswoman, or something?

8 A No.

9 Q Did your children ever join you in -

10 A No.

11 Q Now, do you know a Barry Fingerhut?

12 A Yes.

13 Q And when did you come to know Barry  
14 Fingerhut for the first time?

15 A I would say, probably, 1984, maybe.

16 Q And what was Mr. Fingerhut doing at  
17 the time, professionally?

18 A He was one of the - one of two  
19 partners of GeoCapital.

20 Q And who was the other partner?

21 A Irwin Lieber.

22 Q And do you know when Mr. Fingerhut  
23 and Mr. Lieber had set up?

24 A I don't.

25 Q What was the business of GeoCapital?

D. Holzer - March 28, 2012

Page 18

Page 18

1           A       Asset management.

2           Q       Now, when you say "asset  
3 management," what do you mean by that term,  
4 specifically?

5           A       I mean they garner assets from  
6 different people and put it towards the equity  
7 markets or private placements, or whatever  
8 their charter was. I don't know what their  
9 charter was.

10          Q       They manage people's money?

11          A       That's correct.

12          Q       Now, in managing people's money, did  
13 they have broker's licenses? Did they do  
14 broker's work themselves or did they hire  
15 outside agencies?

16          A       They - I don't know the answer to  
17 that.

18          Q       And how did you come to meet  
19 Mr. Fingerhut for the first time?

20          A       I met Mr. Fingerhut for the first  
21 time through, probably, one of the formal  
22 partners at the firm.

23                   MR. FOLKENFLIK:   Meaning,  
24 Brean Murray?

25                   THE WITNESS:   No. I'm trying

D. Holzer - March 28, 2012

Page 19

Page 19

1 to remember who it was, in  
2 particular. Might have been Brian  
3 Harrah (Phonetic Spelling) who was  
4 head of sales.

5 MR. FOLKENFLIK: And - excuse  
6 me - at Brean Murray?

7 THE WITNESS: Yes.

8 BY MR. CONWAY:

9 Q Okay. And was your involvement  
10 with Mr. Fingerhut professional or personal?

11 A Professional.

12 Q And were you involved in business  
13 transactions together, at the outset?

14 Did you meet him in a deal, or -

15 A I was not involved together with  
16 Barry Fingerhut professionally, no.

17 Q Well, in 1984.

18 A No. Not my whole time working at  
19 Brean Murray.

20 Q Okay. And did there come a time  
21 when you began business relations with  
22 Mr. Fingerhut, even if you were not together?

23 A Never while I was at Brean Murray,  
24 as I recall.

25 Q What -

D. Holzer - March 28, 2012

Page 20

Page 20

1           A       I'm gonna change that. I can't  
2       recall.

3           Q       You can't recall if you did any  
4       business with Mr. Fingerhut?

5           A       You're talking personally?

6           Q       Personal business.

7           A       I don't recall.

8           Q       Okay.

9           A       If I was at Brean Murray then.

10          Q       All right. Now, what was the nature  
11       of Mr. Fingerhut's business at GeoCapital; what  
12       did he do for them?

13                   MR. FOLKENFLIK:    Objection.

14                   Asked and answered.

15       BY MR. CONWAY:

16          Q       Was he Chief Executive? Was he a  
17       salesman?

18                   What did he do?

19                   THE WITNESS:    What did you  
20       say just now?

21                   MR. FOLKENFLIK:    I said  
22       objection, but he corrected it.

23                   THE WITNESS:    Yeah. Okay.

24                   Say it now.    Rephrase it.

25                   MR. FOLKENFLIK:    If you know

D. Holzer - March 28, 2012

Page 21

Page 21

1                   what his title or function was  
2                   within GeoCapital, other than  
3                   partner.

4           A       I - let me go -

5                   Let me say this. I did not work at  
6           GeoCapital, I did not know the inner workings  
7           at GeoCapital, and I'm not gonna say what I  
8           think happened there. Okay?

9           Q       That's fine.

10          A       So, if you're - if you're -

11                   If the course of your questions are  
12          gonna concern GeoCapital, I don't know.

13          Q       Don't worry. We're fine.

14          A       Okay.

15          Q       Do you have any idea in what state  
16          GeoCapital was incorporated?

17          A       No.

18          Q       Did they have an office in New York?

19          A       Yes.

20          Q       Do you know where that office was?

21          A       It was on - right off 3rd Avenue  
22          and 49th Street. I don't recall, offhand.  
23          Forty-ninth or 50th. I can't recall the exact  
24          address.

25          Q       And did you continue a professional

D. Holzer - March 28, 2012

Page 22

Page 22

1 relationship with Mr. Fingerhut during the  
2 period that you were at Brean Murray?

3 A Yes.

4 Q And what type of relationship was  
5 that?

6 Was it a financial relationship?

7 Was it a personal relationship?

8 A It was a financial relationship  
9 where Brean Murray Foster Securities - which  
10 it was called at the time - sold research to  
11 GeoCapital, who was consumed by partners and  
12 portfolio managed sales.

13 How it was broken up at that time,  
14 I do not know. We sold them research, they  
15 paid us back in commissions.

16 Q To your knowledge, how large a firm  
17 was GeoCapital?

18 A I have no idea.

19 Q And how was your investment returned  
20 in commissions, if the information was used, if  
21 purchases were made?

22 A Do you want me to explain the whole  
23 process -

24 Q Yes. Please. Yes. If you would.

25 A - of selling -

D. Holzer - March 28, 2012

Page 23

Page 23

1 Q Yeah.

2 A - research to a firm?

3 Q Yeah.

4 MR. FOLKENFLIK: Is it soft  
5 dollars?

6 THE WITNESS: No. Not  
7 necessarily. Soft dollars could be  
8 paid.

9 MR. FOLKENFLIK: Okay.

10 A Anyway, what typically happens is,  
11 you go into a firm, such as GeoCapital, from  
12 Brean Murray. You bring an institutional  
13 sales person, a research analyst, maybe the  
14 guy running the trading desk, which was me.

15 You make a presentation to the  
16 investments committee of GeoCapital saying,  
17 "We like Apple because blah, blah, blah, blah,  
18 blah." Okay?

19 Now, they say, "Okay. We like that  
20 idea. We're gonna buy Apple," or, "We're not  
21 gonna buy Apple, but you came here, took the  
22 time, sold us this. We're gonna pay you  
23 back."

24 How do they pay us for that  
25 service? That's a service. They'll call up

D. Holzer - March 28, 2012

Page 24

Page 24

1 the next day. Somebody on the order desk, or  
2 one of the portfolio managers, and say, "Okay.  
3 Buy me a hundred-thousand shares of Apple.

4 You charge a commission, or, at the  
5 time, it was a spread, 'cause it's a  
6 negotiated market. Take a little bit of that  
7 spread.

8 Buy it at, let's say, a hundred,  
9 and you sell it to GeoCapital at  
10 one-hundred-and-one-eighth.

11 Q All right. Is the one-eighth your  
12 commission?

13 A Your commission, spread, whatever  
14 you wanna call it. Credit. That's, very  
15 basically, what happens.

16 Q And were you involved in these  
17 research sales with Mr. Fingerhut himself?

18 A Sometimes, yes. Sometimes, no.

19 Q And did a personal relationship  
20 develop between yourself and Mr. Fingerhut  
21 during these years?

22 A Yes.

23 Q And when did that personal  
24 relationship commence, to the best of your  
25 knowledge?



D. Holzer - March 28, 2012

Page 25

Page 25

1           A       Personal relationship commenced on  
2       June 16th, 1992.

3                   I don't know.

4                   MR. FOLKENFLIK:    So that was  
5       a facetious answer?

6                   THE WITNESS:    Yes.

7       BY MR. CONWAY:

8           Q           Oh.   So that was a facetious  
9       answer.   You don't know?   Okay.

10          A       You're asking a question that's  
11       hard to answer.   I can't tell you.   You know  
12       what I'm saying?

13          Q       All right.   Did there come a time  
14       when you began to social -

15          A       I'm sorry.

16          Q       That's okay.

17                   When you began to socialize with  
18       Mr. Fingerhut, outside of business?

19          A       I don't recall.

20          Q       And did there come a time when you  
21       left Brean Murray?

22          A       Yes.

23          Q       And what was the purpose of your  
24       leaving Brean Murray?

25          A       The over-the-counter market was,

D. Holzer - March 28, 2012

Page 26

Page 26

1 basically, finished. That's why I left.

2 Q And you leave Brean Murray when?

3 A After Brean died, also. Firm  
4 started to falter.

5 Q And what year was this?

6 A Around two-thousand-and-two. He  
7 might not have died at the time when I left.  
8 It was -

9 I'm not sure. I don't remember. I  
10 don't recall the exact date, but he was dying.

11 Q And did you leave for any other  
12 business pursuits?

13 A I went to trade my own account at  
14 one of my friend's firms.

15 Q And what firm did you go to?

16 A Dahlman Weiss. Dahlman Simon  
17 Weiss, maybe it was.

18 Q Can you spell it?

19 A I don't remember. D-a-l-h-m-a-n  
20 (sic)

21 Q Dahlman Weiss?

22 A Yeah.

23 And there was a third. Simon, or  
24 Dahlman Weiss Rose.

25 Q Now, at that time, in 2002, you took

D. Holzer - March 28, 2012

Page 27

Page 27

1 your client base with you?

2 A No. No. I said I went to trade my  
3 own account.

4 Q Meaning what?

5 A I had \$20, I bought \$20 worth of  
6 stock and I sold it for \$30.

7 Q And did you have a financial stake?

8 A Stake? No.

9 Q When you went there, what capital or  
10 funds were you using at Dahlman Weiss to make  
11 purchases?

12 A My own.

13 Q And what were your assets at the  
14 time, when you began with Dahlman?

15 A I don't know.

16 Q All right.

17 Are we talking in excess of a  
18 million?

19 A I don't recall.

20 Q And for how long did you remain  
21 trading your own account at Dahlman Weiss?

22 A I don't remember exactly, but,  
23 probably, up until the time I opened up  
24 Fingerhut-Holzer, or whatever the date of that  
25 was.

D. Holzer - March 28, 2012

Page 28

Page 28

1 Q Do you recall when that was? Was it  
2 2002, 2003?

3 A Exact date, I don't recall.

4 Q Okay. Best estimate.

5 A It's easy enough to find out. I  
6 just don't know what date.

7 Was it 2004?

8 Q All right. Fingerhut-Holzer was  
9 what?

10 A Fingerhut-Holzer was a partnership  
11 set up as an LLC.

12 Q Now, how had Fingerhut-Holzer  
13 Partners emerged?

14 What was the background for the  
15 creation of that organization?

16 A Just two gentlemen getting together  
17 and deciding they wanted to open up a hedge  
18 fund.

19 Q Okay. And did you approach  
20 Mr. Fingerhut or did Mr. Fingerhut approach  
21 you?

22 A Kind of evolved. I'm not sure who  
23 approached who, or it just evolved as such.  
24 There was no actual, "Hey. You wanna be my  
25 partner?"

D. Holzer - March 28, 2012

Page 29

Page 29

1 It wasn't like that.

2 So, I don't know the evolution,  
3 exactly. I don't recall.

4 Q Was Mr. Fingerhut still with  
5 GeoCapital at the time?

6 A Yes.

7 Q And did he have any other business  
8 interests of which you were aware?

9 A Yes.

10 Q And what were the other business  
11 interests that you know of?

12 A I'm trying to remember the name.  
13 Barry Rubenstein. I just don't remember the  
14 name.

15 Q Who was Mr. Rubenstein?

16 A He was one of the partners in the  
17 other firm that he was involved with. It  
18 might come to me.

19 Q In GeoCapital?

20 A No.

21 Wasn't the question Did he have any  
22 other interests?

23 Q Yes.

24 A Okay. And I said, yes.

25 Q Yes.

D. Holzer - March 28, 2012

Page 30

Page 30

1           A       You said, "With whom? What was  
2       it?"

3                   I don't recall the name of the  
4       firm. I just remember one of his partners was  
5       Barry Rubenstein. That's all I can help you  
6       with.

7           Q       All right. And who was  
8       Mr. Rubenstein?

9           A       His partner in that firm.

10          Q       Now, was Mr. Rubenstein a financier,  
11       was he a broker, was he -

12          A       He was a financial professional.

13          Q       And did he and Mr. Fingerhut own  
14       businesses together?

15          A       Businesses? They owned stakes in  
16       things. They owned equity in certain  
17       businesses. They owned stocks. They owned  
18       private placements together.

19          Q       Did Mr. Fingerhut have a specialty  
20       in the market?

21                   Was he a technologist guy?

22                   Was he a real estate guy?

23                   Was he a commodities guy?

24          A       He was a general analyst. He had a  
25       general, good working knowledge of the whole

D. Holzer - March 28, 2012

Page 31

Page 31

1 equities market, as far as I'm concerned.

2 But was he a specialist? I  
3 wouldn't consider him a specialist. He may  
4 have started out as a specialist. I don't  
5 know.

6 Q All right. He was, basically, an  
7 analyst?

8 A He was a portfolio manager with  
9 analytical abilities.

10 Q Do you recall if there was any  
11 meetings between yourself and Mr. Fingerhut for  
12 the discussing of an ongoing business  
13 relationship between the two of you?

14 A There were meetings, sure.

15 Q Where were those meetings held?

16 A I don't recall.

17 Q Were they held at your offices, his  
18 offices, over dinner, over lunch, some other  
19 time?

20 A It could have been any of them. I  
21 just don't recall, specifically, where they  
22 were.

23 Q What was the nature of the  
24 discussions between yourself and Mr. Fingerhut  
25 as to ongoing business relationships?

D. Holzer - March 28, 2012

Page 32

Page 32

1           A       The nature of the discussion was  
2           how to make people money, basically. What we  
3           wanted to do to do that.

4           Q       Okay. And was Fingerhut-Holzer  
5           Partners the first organization that the two of  
6           you put together?

7           A       Yes.

8           Q       And what was the business of  
9           Fingerhut-Holzer Partners?

10          A       Specific business was to manage  
11          assets in the best way possible in any field  
12          we chose.

13          Q       Now, did you have any licenses in  
14          the financial industry? Were you a licensed  
15          broker?

16          A       Personally?

17          Q       Yes.

18          A       I probably had eight or nine  
19          different licenses.

20          Q       Which would include what?

21          A       A Series 24, Series 55, Series 7,  
22          Series 63, Series 8, Registered Options  
23          Principal, member of the New York Stock  
24          Exchange.

25          Q       Did you have a seat on the Stock



D. Holzer - March 28, 2012

Page 33

Page 33

1 Exchange?

2 A At one time. Yes.

3 Well, we always did. I held the  
4 seat for two years.

5 Q Okay. Fingerhut-Holzer Partners  
6 held a seat?

7 A No.

8 Q Well, that's what we're here to find  
9 out.

10 A Fingerhut-Holzer Partners had no  
11 licenses. Fingerhut-Holzer Partners did not  
12 and was not a member of the New York Stock  
13 Exchange.

14 You asked, specifically, if I held  
15 certain licenses. That was over the course of  
16 my professional career at Brean Murray, and  
17 then Brean Murray Foster Securities, which it  
18 became.

19 Q All right. So you held a seat on  
20 the stock market while at Brean Murray?

21 A Correct.

22 Q But it was not yours?

23 A It was partially mine. I was the  
24 general partner.

25 Q When you left Brean Murray, did you

D. Holzer - March 28, 2012

Page 34

Page 34

1 leave the seat behind or -

2 A The seat was sold, way prior to  
3 that.

4 Q Sold.

5 When was the last time you had  
6 seats in the market?

7 A Seats?

8 Q Seats, plural.

9 A The last seat was sold, and I'm not  
10 sure about the date. I'd say, probably, in  
11 the late '90s we sold it. The first one was  
12 sold in the early '90s. We bought them in the  
13 early '70s. Thirty-six-thousand-dollars and  
14 \$43,000.

15 Q And, just as a curiosity, what were  
16 they sold for?

17 A Two-million and a million-six, or  
18 something like that.

19

20 (At which time, a discussion  
21 was held off the record.)

22

23 BY MR. CONWAY:

24 Q Now, when you and

25 Mr. Holzer -

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D. Holzer - March 28, 2012

Page 35

Page 35

1 A I am Mr. Holzer.

2 Q Yes, sir. When you and  
3 Mr. Fingerhut -

4 A Yes.

5 Q - were sitting to discuss your  
6 future together, what was it that the two of  
7 you intended to do as a professional  
8 arrangement?

9 MR. FOLKENFLIK: Objection.

10 Asked and answered.

11 THE WITNESS: I was just  
12 gonna - well, go ahead.

13 MR. FOLKENFLIK: Go ahead.

14 You can answer it again.

15 A To make people money.

16 Q And was Fingerhut-Holzer Partners  
17 LLC a company organized in the State of New  
18 York?

19 A You know, I don't recall if it was  
20 set up in New York State or Delaware. I think  
21 New York State.

22 Q Did you have an attorney?

23 A Yes.

24 Q Who was the attorney responsible for  
25 setting up the LLC?

D. Holzer - March 28, 2012

Page 36

Page 36

1 A I don't remember the name anymore.

2 Q And did the two of you go and engage  
3 the -

4 A Yes.

5 Q - the law firm to set up the  
6 corporation?

7 A Yes.

8 Q And is there any doubt in your mind  
9 that Fingerhut-Holzer Partners LLC was a  
10 business corporation?

11 A Any doubt?

12 Q Yes. Is there any doubt that it was  
13 a corporation?

14 A No doubt.

15 Q Okay. Did it operate in New York?

16 A Yes.

17 Q Did it register itself as a  
18 financial house, in any way?

19 A No. We were not required to.

20 Q Now, to the best of your knowledge,  
21 was stock issued on Fingerhut-Holzer Partners?

22 A Stock certificates?

23 Q Stock certificates.

24 MR. FOLKENFLIK: Objection.

25 Counselor, there is a limited

D. Holzer - March 28, 2012

Page 37

Page 37

1 liability corporation. There are  
2 memberships. All right?

3 BY MR. CONWAY:

4 Q Did you and Mr. Fingerhut  
5 share ownership of Fingerhut-Holzer Partners?

6 A Yes.

7 Q All right. Was it an equal division  
8 of ownership?

9 A I'm trying to remember if there  
10 were other people involved. I don't recall  
11 right now. It was equal between me and him,  
12 though.

13 Q All right. There may have been  
14 third-party participants whose names escape you  
15 at the moment?

16 A Yes.

17 Q But you and Mr. Fingerhut were equal  
18 partners?

19 A Correct.

20 Q And what was the division of  
21 responsibility within the company; what did Mr.  
22 Fingerhut do and what did you do?

23 A Well, it was a mixed bag. We each  
24 did our own thing. He, basically, would have  
25 been the portfolio manager. I would have been

D. Holzer - March 28, 2012

Page 38

Page 38

1 the trader.

2 Q So he was the -

3 A He would have been long-term, I  
4 would have been short-term.

5 Q He was responsible for picking the  
6 equities and making determinations on  
7 investment vehicles?

8 A Yes.

9 Q And you would have been - you were  
10 the hands-on salesman, mover -

11 MR. FOLKENFLIK: Objection to  
12 the term "salesman." That's not  
13 what the witness said. It's a  
14 different term.

15 THE WITNESS: That's correct.

16 BY MR. CONWAY:

17 Q Okay. I understand.

18 Your function would have been  
19 exactly what?

20 A Trading.

21 Q Did you trade in your own name or  
22 did you trade through a third-party?

23 A What do you mean, "through a  
24 third-party"?

25 Q Did you do your own trading within

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D. Holzer - March 28, 2012

Page 39

Page 39

1 the company?

2 A Yes.

3 Q All right. Were you licensed and  
4 permitted to trade your stocks within your  
5 company?

6 A I'll explain something to you.

7 Q Please, yes. Do.

8 A I might be long-winded, but -

9 Q That's okay.

10 A - maybe it will short circuit some  
11 of the questions.

12 Anybody can trade their own money  
13 anywhere, any time, any person. You could be  
14 banned from the securities industry for life,  
15 you could be stripped of every license you  
16 ever had, but anybody can trade their own  
17 account.

18 Do you understand what I'm saying?

19 Q Yes.

20 A Okay. Now, what's the question?

21 MR. FOLKENFLIK: Just to cut  
22 this short, did you trade through a  
23 brokerage firm?

24 THE WITNESS: Through one?

25 Yes. You have to. We cannot

D. Holzer - March 28, 2012

Page 40

Page 40

1 execute our own trades.

2 A Is that what you were asking?

3 Q Yes. That's what I was asking.

4 A I misunderstood then.

5 Q Okay.

6 A Yes. We traded through a brokerage

7 - I traded through a brokerage firm.

8 Q All right. And what was the

9 brokerage firm? Which one?

10 A Probably, Dahlman Rose, still.

11 Dahlman Rose.

12 Q Okay.

13 A And other accounts. I can't recall

14 who they were.

15 Q But there were other trading

16 organizations you used?

17 A Yeah. This place kind of dims your  
18 memory a little bit.

19 Q Did Fingerhut-Holzer Partners have  
20 assets?

21 A Assets? No. Just what was set up  
22 in the LLC as we went along. There was no  
23 assets in Fingerhut-Holzer Partners.

24 Q Okay. How did Fingerhut-Holzer -

25 MR. FOLKENFLIK: Can I



D. Holzer - March 28, 2012

Page 41

Page 41

1 interrupt you?

2 MR. CONWAY: Sure. Go ahead.

3 MR. FOLKENFLIK: What do you  
4 mean by, "just what was set up in  
5 the LLC?"

6 Contributions at the time  
7 of

8 THE WITNESS: No. There was  
9 no contributions at the time of  
10 incorporation. Zero. As we went  
11 along and we were able - and we did  
12 a certain deal and a separate LLC  
13 was set up for each deal, it was  
14 funded at that time.

15 MR. FOLKENFLIK: Okay. So  
16 there were no funds which you traded  
17 through Fingerhut-Holzer?

18 THE WITNESS: Zero funds.  
19 Zero.

20 MR. FOLKENFLIK: But it was -  
21 for want of a better term - a  
22 holding company for other LLCs -

23 THE WITNESS: That's -

24 MR. FOLKENFLIK: - that were  
25 set up to do specific transactions?

D. Holzer - March 28, 2012

Page 42

Page 42

1 THE WITNESS: That's  
2 absolutely correct.

3 MR. FOLKENFLIK: Okay.  
4 And Fingerhut- Holzer, other than  
5 indirectly through the separate LLCs  
6 that were set up for specific  
7 transactions, it didn't have a  
8 portfolio that it traded out of?

9 THE WITNESS: That's correct.

10 MR. FOLKENFLIK: Only through  
11 the other subsidiaries.

12 THE WITNESS: As each sub -  
13 as each sub was set up, they were  
14 funded for whatever the specific  
15 investment vehicle was for that LLC.

16 BY MR. CONWAY:

17 Q Right. Was Mr. Fingerhut the  
18 gentleman who brought in most of the investors?

19 MR. FOLKENFLIK: Well,  
20 objection. Assumes facts not in  
21 evidence.

22 MR. CONWAY: No. That's what  
23 we're here to find out.

24 MR. FOLKENFLIK: Who invested  
25 in the separate subsidiary LLC?

D. Holzer - March 28, 2012

Page 43

Page 43

1 THE WITNESS: Customers.

2 BY MR. CONWAY:

3 Q All right. Was Mr. Fingerhut the  
4 principal party bringing in the customers?

5 A No.

6 Q Did you bring in an equal volume of  
7 customers?

8 A I don't recall.

9 Q Now, was Mr. Fingerhut responsible  
10 for designing the investments for the customers?

11 A Designing the investments? What's  
12 that mean, exactly?

13 MR. FOLKENFLIK: Just ask him  
14 an open-ended question and he'll  
15 explain it.

16 BY MR. CONWAY:

17 Q The thing is, what I wanna know,  
18 more specifically, is, did Mr. Fingerhut make  
19 the approach to the clients and say, "I'm  
20 suggesting that you invest in this particular  
21 vehicle"?

22 A No. Not all the time.

23 Q Okay. Did he do it on occasion?

24 A Sometimes.

25 Q All right. Did customers come to

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D. Holzer - March 28, 2012

Page 44

Page 44

1 him and say, "This is what I would like to do.

2 Can you be my vehicle to do it?"

3 A Not necessarily.

4 Q Okay. Can you describe what it was  
5 that he did, as best you can.

6 A Barry was an idea guy. He came up  
7 with an idea and then we put it into play.  
8 That's what he did.

9 Q And what were some of his ideas for  
10 Fingerhut-Holzer Partners?

11 A For Fingerhut-Holzer Partners?

12 Q Yes.

13 A Zero. However, for the  
14 subsidiaries -

15 Q Yeah. Okay. Fine. For the  
16 investors and subsidiaries, tell me what some  
17 of his ideas were.

18 A Some of the ideas were real estate  
19 investments in Florida. Private placements in  
20 New York.

21 Q And what do you mean by "Private  
22 placements in New York"?

23 A Money with privately held  
24 companies.

25 Q What else?

D. Holzer - March 28, 2012

Page 45

Page 45

1 A Some public stock, publicly traded  
2 stock.

3 Q What else?

4 A That's it.

5 Q Now, when investor money came in,  
6 into what particular vehicle was it placed?

7 A LLCs.

8 Q Each investment -

9 A Set up LLCs at J.P. Morgan Chase.  
10 What?

11 Q Each investments had an LLC. By  
12 that, do you mean a company or an account?

13 A The - the LLC was domiciled at J.P.  
14 Morgan Chase.

15 MR. FOLKENFLIK: The record  
16 should reflect that the witness  
17 gestured toward the copy of the  
18 Amended Complaint.

19 BY MR. CONWAY:

20 Q So, when money came in, it was  
21 directed to J.P. Morgan Chase?

22 A Yes.

23 Q And limited liability corporations  
24 were set up for these investments?

25 A Correct.

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D. Holzer - March 28, 2012

Page 46

Page 46

1 Q All right. Were they set up through  
2 the same lawyer that you used?

3 A I don't recall. We might have  
4 changed lawyers because they were too  
5 expensive, as I recall.

6 I just don't remember who we  
7 changed to after the initial firm was set up.

8 Q All right. Where did you have your  
9 place of business?

10 A 399 Park Avenue.

11 Q And how many employees did  
12 Fingerhut-Holzer Partners have?

13 A Including the partners?

14 Q Yeah.

15 A I think, seven.

16 Q And who were the seven?

17 A Barry Fingerhut, David Holzer,  
18 Andrew Fingerhut.

19 Q Is that Mr. Fingerhut's son?

20 A That's correct.

21 Brooke Fingerhut.

22 Q Is that his daughter?

23 A That's correct.

24 Douglas Holzer, and we had a  
25 receptionist. I don't recall her name.

D. Holzer - March 28, 2012

Page 47

Page 47

1 And we had a - I don't remember his name...

2 CFO. I don't remember his name.

3 MR. FOLKENFLIK: Can I get  
4 the question read back, please? The  
5 original question.

6 (At which time, the  
7 requested portion of testimony was  
8 read back by the stenographer.)

9 BY MR. CONWAY:

10 Q Now, how did Fingerhut-Holzer make  
11 its money, Fingerhut-Holzer Partners make its  
12 money?

13 A We didn't.

14 Q What does that mean?

15 Where was the income stream for  
16 Fingerhut-Holzer?

17 A There was no income stream.

18 Q How were you and Mr. Fingerhut  
19 profiting from Fingerhut-Holzer Partners?

20 A There was no profit.

21 Q Well, how did you earn a living at  
22 the time?

23 A We didn't earn a living.

24 Q Well, what was the purpose of  
25 Fingerhut-Holzer Partners if not to make a

D. Holzer - March 28, 2012

Page 48

Page 48

1 profit?

2 A To earn a living.

3 Q All right. And you never made  
4 any money with -

5 A No.

6 Q Never ever?

7 A No.

8 Q Now, is this the year 2003?

9 A I don't recall the exact year. I  
10 think it was 2003, or 2004, maybe. I just  
11 don't recall.

12 Q And what income sources did you have  
13 in 2003?

14 A Trading.

15 Q Trading in?

16 A My own account.

17 Q And what was the quantum value of  
18 your trading account?

19 A I don't remember.

20 Q And what was Mr. Fingerhut's source  
21 of income?

22 A I have no idea.

23 Q Now, in setting up Fingerhut-Holzer  
24 Partners, there was an intention to earn money  
25 there; correct?



D. Holzer - March 28, 2012

Page 49

Page 49

1 A That's correct.

2 Q And how were you going to earn -  
3 what was the plan to earn money?

4 A By the investment process.

5 Q By participating in the investment  
6 process with your customers?

7 A That's correct.

8 Q And that never took place?

9 A The investment process took place.  
10 Nothing ever came to fruition. You have to  
11 sell something to make money.

12 Q All right.

13 So, was Fingerhut Partners a failed  
14 business investment?

15 A Was it a failed business  
16 investment? Yes.

17 Q And it never made any money at all?

18 A No.

19 Q Did you file taxes for 2003?

20 A Yes.

21 Q And did -

22 A Don't say two-thousand-and-three  
23 when I'm not sure of the year. I don't recall  
24 if it was two-thousand-and-three. It's public  
25 record, I know that.

D. Holzer - March 28, 2012

Page 50

Page 50

1                   So, I mean, it's very easy to find  
2                   out when Fingerhut-Holzer Partners was  
3                   initiated.

4                   Q       Okay. Now, did you have business  
5                   interests separate from Fingerhut-Holzer  
6                   Partners at the time?

7                   A       No. Business interests?

8                   Q       Business interests. Yes.

9                   A       No.

10                   MR. FOLKENFLIK: Excluding  
11                   your personal trading.

12                   A       I had investments, yes.

13                   Q       That were your own?

14                   A       Yes.

15                   Q       Were they under the umbrella of  
16                   Fingerhut-Holzer?

17                   A       No.

18                   Q       Were they under any other corporate  
19                   entity?

20                   A       No.

21                   Q       All right. Were they entirely held  
22                   within your own name?

23                   A       In my name. Correct.

24                   Q       Was your wife a participant in any  
25                   of this?

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D. Holzer - March 28, 2012

Page 51

Page 51

1 A I don't recall.

2 Q Now, you and Mr. Fingerhut were  
3 partners. Correct?

4 A Yes.

5 MR. FOLKENFLIK: I have to  
6 object, to the extent that he uses  
7 the term in a legal sense.

8 BY MR. CONWAY:

9 Q You may answer.

10 A Yes.

11 Q Okay. And the two of you -

12 A Let's - let's just clarify this.

13 There was an LLC.

14 Q Right.

15 A You understand the LLC?

16 Q I understand.

17 A Okay.

18 Q All right.

19 MR. FOLKENFLIK: Excuse me.  
20 That was to clarify the partners  
21 question that you were an LLC?

22 THE WITNESS: Right.

23 BY MR. CONWAY:

24 Q And did you and Mr. Fingerhut agree  
25 on the outline of the purposes of

D. Holzer - March 28, 2012

Page 52

Page 52

1 Fingerhut-Holzer Partners?

2 A There was no written outline.

3 Q All right. Did you agree, "This is  
4 the business we are involved in, and this is" -

5 A There's no - there was no model.

6 Q All right. Did you set out to make  
7 money together?

8 A Yes.

9 Q Was it your intention to share  
10 profits together?

11 A Yes.

12 Q And, in creating the LLCs, was this  
13 intended to a method of, a vehicle for making  
14 profits?

15 A Yes.

16 Q All right.

17 And how exactly was profit to be  
18 made through the LLCs that were created by  
19 investments that came to Fingerhut-Holzer  
20 Partners?

21 A How it was supposed to be created  
22 was, you purchased whatever asset you  
23 purchased, put it into the LLC, divide up the  
24 players' participation by the amount of money  
25 they put in.

D. Holzer - March 28, 2012

Page 53

Page 53

1           So, if there was a million-dollars  
2           and Joe Blow put in ten per cent, he owned a  
3           hundred-thousand-dollars worth of that  
4           investment, just prorated out.

5           Now, if that particular asset grew  
6           to be ten-million-dollars, he owned that  
7           percentage of ten-million-dollars.

8           And then, when we sold it, he  
9           liquidated and he made money on it.

10          Q       Okay. The employees had to be paid.

11                 Who was responsible for paying  
12           those employees during the period that  
13           Fingerhut-Holzer Partners was not earning  
14           money?

15          A       Barry Fingerhut and David Holzer.

16          Q       Both of you together paid your  
17           children's salaries out of your personal  
18           earnings; out of your personal holdings?

19          A       Correct.

20          Q       And what exactly did Andrew  
21           Fingerhut do for the company?

22          A       Andrew Fingerhut was an analyst.

23          Q       And what did Brooke Fingerhut do for  
24           the company?

25          A       She was never there. I don't know.

D. Holzer - March 28, 2012

Page 54

Page 54

1           Q       But she was listed as an employee  
2                   and received compensation, but didn't do much  
3                   work within the confines of the office?

4           A       I never saw her there.

5           Q       Okay. What did David Holzer do?

6           A       David?

7           Q       Excuse me. Douglas Holzer. I'm  
8                   sorry.

9           A       Douglas Holzer was set up to do  
10                  trading.

11          Q       And did he do any trading within the  
12                  confines of the company?

13          A       No.

14          Q       What was Douglas Holzer doing at the  
15                  time that he was with Fingerhut-Holzer  
16                  Partners?

17          A       Nothing.

18          Q       Was he in school, was he -

19          A       He was graduating.

20          Q       Did he do any work at the firm?

21          A       He would come up with trading  
22                  ideas. Because there was no money to invest  
23                  in them, they went to nought.

24          Q       All right. Did he spend much time  
25                  at the office?

D. Holzer - March 28, 2012

Page 55

Page 55

1 A All the time, every day.

2 Q Every day.

3 So, at the office, on a daily  
4 basis, would be you, Mr. Fingerhut, your son,  
5 his son, and the receptionist?

6 A His -  
7 Andrew Fingerhut?

8 Q Yeah.

9 A He lived in Los Angeles.

10 Q Did he work for the firm from a  
11 distance?

12 A Yes.

13 Q Okay. Did he work on a daily basis?

14 A As far as I know.

15 Q Now, who was responsible for footing  
16 the costs of creating the work space at 399  
17 Park Avenue?

18 A It was a turn-key operation. It  
19 was there.

20 Q Okay. You took it from the  
21 building?

22 A No. We sublet it from - from a -  
23 that firm. I don't know the name.

24 Q All right. Did you and Mr. Holzer  
25 set up a -

D. Holzer - March 28, 2012

Page 56

Page 56

1 MR. FOLKENFLIK: Mr.

2 Fingerhut.

3 MR. CONWAY: I'm sorry.

4 BY MR. CONWAY:

5 Q Did you and Mr. Fingerhut set up a  
6 working account from which you would make  
7 payments such as the first month's rent?

8 A Yes. We had a - a - we had a firm  
9 checking account.

10 Q All right.

11 And that checking account was in  
12 the name of Fingerhut-Holzer Partners LLC?

13 A Yes.

14 Q All right.

15 And both of you would have been  
16 signatories to it?

17 A Yes.

18 Q Was Mr. Fingerhut in the office on a  
19 regular basis?

20 A Not - not in the first year or so  
21 of operation.

22 Q Did there come a time when he became  
23 more actively involved in the company?

24 A After the first year or so of  
25 operation.

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D. Holzer - March 28, 2012

Page 57

Page 57

1 Q All right.

2 And were you at the firm on a  
3 regular basis?

4 A Yes.

5 Q Where were you living at the time?

6 A 10 Sky Drive.

7 Q Where's that?

8 A New City, New York.

9 Q And did you commute into the city  
10 every day?

11 A I did.

12 Q Now, was your service account, that  
13 you paid rent and mortgage and employees out  
14 of, was there also any second or third  
15 accounts?

16 A You're talking about personal or  
17 business?

18 Q Business, business only.

19 A You referred to it as what, a  
20 service account?

21 Q Yes. The account for  
22 Fingerhut-Holzer Partners.

23 A Just one account.

24 Q One account.

25 There were no other accounts?

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D. Holzer - March 28, 2012

Page 58

Page 58

1 A No.

2 Well, for each LLC, an account has  
3 to be set up. Because, when you open up an  
4 LLC, you have a vehicle in there.

5 Whatever that piece of merchandise  
6 is has to be bought from an account attached  
7 to that particular LLC. Every LLC is an  
8 individual entity. That's why they're set  
9 up. They - they're not living, per se, but  
10 they're - that's an entity.

11 Like a human being, that's an  
12 entity. It's an investment deal. Limited  
13 liability company.

14 So when you open one up, you have  
15 to open up a corresponding banking  
16 relationship with that LLC that does banking,  
17 and you must open up an account with it.

18 Q Who did that for Fingerhut-Holzer?

19 A Andrew and - I can't remember his  
20 last name. I can't remember his last name.  
21 The CFO.

22 Just keep going, and I'll think of  
23 it.

24 Q Okay. There was a CFO on -

25 A Yes. That was the other employee,

D. Holzer - March 28, 2012

Page 59

Page 59

1 I said, that was there every single day.

2 MR. FOLKENFLIK: Just to try  
3 and cut this short. If I understand  
4 your answer correctly, when there  
5 was an investment to be made, there  
6 was an investment vehicle set up as  
7 a separate LLC. It would then be  
8 funded, at that time, and the  
9 membership interests would be  
10 delivered to each of the funding  
11 sources.

12 And then, whenever  
13 investment was made to that LLC, it  
14 was made to the bank account  
15 established for that LLC -

16 THE WITNESS: Correct.

17 MR. FOLKENFLIK: At J.P.  
18 Morgan Chase.

19 THE WITNESS: Absolutely  
20 correct.

21 MR. FOLKENFLIK: Are all  
22 those steps correct?

23 THE WITNESS: That's  
24 absolutely correct.

25 MR. FOLKENFLIK: So, the

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D. Holzer - March 28, 2012

Page 60

Page 60

1 process was, you came up with an  
2 investment idea; correct?

3 THE WITNESS: Correct.

4 MR. FOLKENFLIK: Then created  
5 an investment LLC; correct?

6 THE WITNESS: Correct.

7 MR. FOLKENFLIK: Then  
8 membership interests were acquired  
9 by the investors in the LLC;  
10 correct?

11 THE WITNESS: Correct.

12 MR. FOLKENFLIK: And then the  
13 funds for the membership interests  
14 would be deposited directly into an  
15 account in the name of the LLC at  
16 J.P. Morgan Chase.

17 THE WITNESS: The only step  
18 that has to be reversed - the money  
19 comes in first, then the percentages  
20 are established.

21 MR. FOLKENFLIK: Okay. The  
22 money would go into the LLC -

23 THE WITNESS: First.

24 MR. FOLKENFLIK: - in the  
25 J.P. Morgan Chase LLC account.

D. Holzer - March 28, 2012

Page 61

Page 61

1 THE WITNESS: Correct. Then  
2 you can establish percentages, and  
3 somebody could say, "I want "X"  
4 amount." But, all of a sudden, only  
5 "X" amount comes in. So, as soon as  
6 the money's funded in the LLC, each  
7 participant gets a certain  
8 percentage of the LLC.

9 And then, as he said, the  
10 checking accounts opened up and paid  
11 out.

12 MR. FOLKENFLIK: And then the  
13 investment is made from that  
14 checking account?

15 THE WITNESS: That's correct.

16 MR. FOLKENFLIK: Okay.

17 BY MR. CONWAY:

18 Q And Andrew Fingerhut was  
19 responsible for doing this from his Los Angeles  
20 residence?

21 A He was an analyst.

22 Q Well, who's the party who actually  
23 filled out the -

24 MR. FOLKENFLIK: He said the  
25 CFO.

D. Holzer - March 28, 2012

Page 62

Page 62

1           A       Yeah. CFO guy. I can't think of  
2       his name. It's crazy that I can't think of  
3       his name.

4                   Just put CFO. Refer to him as  
5       "CFO." He was there.

6           Q       My clients have identified a Mr.  
7       Blum.

8           A       Oh. That's it.

9           Q       Does that sound familiar?

10          A       Mr. Blum.

11                   MR. FOLKENFLIK: Mister,  
12       what, Blum?

13                   MR. CONWAY: Yeah. Mr. Blum.

14          A       That's the guy.

15          Q       What's Mr. Blum's first name?

16          A       His father was Howard Blum.

17          Q       Was Mr. Blum a young man?

18          A       Yes.

19          Q       And Mr. Blum is the CFO?

20          A       Yes.

21          Q       And, as CFO, he was responsible for  
22       the manual work that had to be done -

23          A       That's correct.

24          Q       - and setting up all these things?

25          A       That's correct.

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D. Holzer - March 28, 2012

Page 63

Page 63

1 Q That was his job?

2 A Correct.

3 Q How many different LLCs were set up  
4 by Fingerhut-Holzer?

5 A I don't know.

6 Q Are we talking in excess in ten?

7 A I don't recall. No.

8 Q In excess of a hundred? Somewhere  
9 in between?

10 A You said in excess of ten. I said  
11 no. It cannot be in excess of a hundred.

12 Q But I thought you said you didn't  
13 know?

14 A No. I don't know for sure. It was  
15 not in excess of ten.

16 Q All right.

17 To the best of your recollection,  
18 how many investment LLCs were set up by  
19 Fingerhut-Holzer Partners?

20 A Four, five, maybe.

21 Q Okay. And who were the  
22 participators in those four or five different  
23 investments?

24 A I - I don't recall. I don't recall  
25 the names.

D. Holzer - March 28, 2012

Page 64

Page 64

1 Q Okay.

2 MR. FOLKENFLIK: Why don't  
3 you show the witness the list -

4 MR. CONWAY: All right.  
5 All right. We're getting there.  
6 We're getting there.

7 MR. FOLKENFLIK: Round about.

8 BY MR. CONWAY:

9 Q Now, amongst the defendants  
10 identified here are a number of other  
11 companies, including Fingerhut-Holzer Equities,  
12 Incorporated.

13 Are you familiar with that company?

14 A Not particularly. I mean, I - I  
15 don't recall anymore.

16 You know, just keep reading and  
17 I'll tell you if I'm familiar with any.

18 Q Fingerhut-Holzer, Incorporated.  
19 Fingerhut-Holzer Fund, L.P. Fingerhut-Holzer  
20 The Waverly I, LLC.

21 A I mean, I remember some of them. I  
22 just don't remember what went into them. Some  
23 of them were real estate. Some of them might  
24 have been a magazine that we put money into.  
25 Some of them might have been hedge funds.

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D. Holzer - March 28, 2012

Page 65

Page 65

1 I just don't remember which fit  
2 with which. You understand what I'm saying?

3 Q All right. Now, when you set up a -  
4 when an LLC was set up, did it invite  
5 participation from other parties, other than  
6 the originals?

7 A Once it was set up, it was closed.

8 Q Once it was set up it was closed?  
9 There were no others?

10 A In the initial funding, we'd set  
11 up, for the LLCs, different funding charts,  
12 investments. Might have been Waverly I,  
13 Waverly II, Waverly III, Waverly IV.

14 You understand?

15 Q When you indicated -

16 A You don't expand upon an LLC.

17 Q When you indicated that  
18 Mr. Fingerhut had an interest in real estate,  
19 when real estate was being marketed and  
20 investors came to participate, purchase  
21 apartments, things like that, where would the  
22 money go?

23 MR. FOLKENFLIK: Purchase  
24 what?

25 MR. CONWAY: Purchase

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D. Holzer - March 28, 2012

Page 66

Page 66

1 apartments.

2 MR. FOLKENFLIK: Objection.

3 The purchase of apartments is  
4 different from the purchase of an  
5 interest in an LLC.

6 A That's why you set up an LLC.

7 Q All right.

8 A The LLC does the purchasing of  
9 whatever that vehicle is, whether it's  
10 apartments, parking spaces, it doesn't matter.

11 The investor owns a piece of the  
12 LLC which owns the whole investment.

13 Q All right. So my question was -

14 A Yeah.

15 Q - after the LLC is set up, does it  
16 invite contributions from investors for  
17 specific purposes and specific points in the  
18 investment?

19 A Not that particular LLC. You set  
20 up one, two, three, four, five. If it's the  
21 same investment, if it's in the same real  
22 estate complex, or the same privately held  
23 company, it will be a different tranche of  
24 money with a different LLC.

25 Reason being is, you cannot change

D. Holzer - March 28, 2012

Page 67

Page 67

1 the percentage ownership of the first one by  
2 putting more money into it. You can't do  
3 that.

4 Q I understand.

5 A So that's how it works.

6 Q Now, are you familiar with John and  
7 Heidi Rapillo?

8 A Yes.

9 Q When did you meet John and Heidi  
10 Rapillo for the first time?

11 A John Rapillo, probably, in 1976,  
12 '77.

13 Q And what was the nature of your  
14 early involvement with Mr. Rapillo?

15 A Mine, particularly? Very little.

16 Q Okay.

17 What was the relationship of anyone  
18 in your family?

19 A Mr. Rapillo was an interior  
20 decorator that my wife hired.

21 Q All right.

22 And did you come to meet  
23 Mr. Rapillo over the years, after being  
24 introduced by your wife?

25 A Here and there.

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D. Holzer - March 28, 2012

Page 68

Page 68

1 Q And did there come a time when your  
2 relationship with Mr. and Mrs. Rapillo grew to  
3 a personal friendship?

4 A Yes. But after he got married.

5 Q All right.

6 And you met him as a bachelor?

7 A Yes.

8 Q Okay.

9 And he subsequently married Heidi  
10 Rapillo?

11 A Right.

12 Q And when, approximately, was that?

13 A I have no idea.

14 Q And did a friendship develop after  
15 he married?

16 A Yes.

17 Q How did that occur?

18 A My wife invited them over for  
19 dinner, they invited us for dinner, every -  
20 couple times a year.

21 Q And, at any time, did you solicit  
22 business investment from Mr. Rapillo in the  
23 Fingerhut-Holzer Enterprises?

24 A Yes.

25 Q Okay.

D. Holzer - March 28, 2012

Page 69

Page 69

1 Approximately, when was that?

2 A I don't recall.

3 Q Are we talking in the 1990s, or -

4 A I don't recall.

5 No. Later. Two-thousand-three,  
6 four. I don't recall the exact date, though.  
7 Maybe even later.

8 Q Are you aware that Mr. Rapillo had  
9 an accident that caused him a personal injury?

10 A Yes.

11 Q Are you aware that he had a personal  
12 injury matter that he won in court?

13 A Yes.

14 Q And are you aware that, from this,  
15 he extracted a sum of, approximately,  
16 two-point-seven-five-million-dollars?

17 A I knew he extracted some. I didn't  
18 know exactly how much.

19 Q And this was in the summer of 2004.

20 A Yes.

21 Q In two-thousand-and-four,  
22 Fingerhut-Holzer Partners was in operation.  
23 Was it not?

24 A Wasn't or was?

25 Q Was in operation.

D. Holzer - March 28, 2012

Page 70

Page 70

1           A       I - I'm not sure. I think so, but  
2           I'm not sure. Pretty sure. I can't answer  
3           that question.

4           Q       Did there come a time when you had  
5           conversations with Mr. Rapillo for the purpose  
6           of promoting investment with the  
7           Fingerhut-Holzer operation?

8           A       Yes.

9           Q       And when and where do you recall  
10          having a conversation for the first time with  
11          Mr. Rapillo concerning the investment funds?

12          A       My house.

13          Q       And where was that?

14          A       Where was it?

15          Q       Your house at Sky Drive?

16          A       Yes.

17          Q       And what was the occasion, holiday,  
18          birthday?

19          A       I don't know.

20          Q       And what was the nature of your  
21          conversations?

22          A       I don't recall. It was - he - he  
23          actually initiated. Said he was hardly  
24          getting any money from wherever he had his  
25          money in. Some bonds, or something.

D. Holzer - March 28, 2012

Page 71

Page 71

1 Q And did he make a request of you?

2 A Yeah. He - he actually - he said,  
3 "I'm not getting a good return on my money.  
4 He's got me in some municipal bonds."

5 I don't really recall exactly what  
6 it was.

7 And then I said, "Well, we're doing  
8 a real estate investment. Maybe you wanna put  
9 some money in there."

10 Q And what real estate investment were  
11 you referring to?

12 A Well, it was in Saint  
13 Augustine. I just don't remember if it was  
14 Waverly. I can't remember which particular  
15 one.

16 Q Were there multiple investments in  
17 Saint Augustine?

18 A There was different -

19 Q Or multiple projects.

20 A Yeah.

21 Q And what were the nature of your  
22 discussions with Mr. Rapiello?

23 MR. FOLKENFLIK: Objection.

24 Why don't you ask him what he said.

25 MR. CONWAY: I'm trying to.

D. Holzer - March 28, 2012

Page 72

Page 72

1 BY MR. CONWAY:

2 Q What were the nature of your  
3 discussions?

4 MR. FOLKENFLIK: What did you  
5 say to him, what did he say to you?

6 A I said, "We're going to make an  
7 investment in different condominium complexes  
8 within Saint Augustine."

9 I don't recall the actual name of  
10 the place now. Can't remember.

11 But, anyway, and, "Would  
12 you like to put money into this real estate?"

13 Q And what, in specific, were you  
14 suggesting?

15 A That he buy it at "X" number of  
16 dollars and sell it at "X" number of dollars.  
17 I don't recall the exact numbers.

18 Q Buy what, in specific?

19 A A piece of the Waverly, which is  
20 the LLC that invested in the condominiums in  
21 Florida.

22 Q And when you say buy, "a piece of  
23 the Waverly," what exactly did you mean?

24 An apartment, a chunk of the  
25 investment?



D. Holzer - March 28, 2012

Page 73

Page 73

1           A       No. I told him what the Waverly  
2       would invest in and he would own a particular  
3       amount of that.

4                   Let's say - I don't recall the  
5       initial investment, but say it was  
6       five-million-dollars.

7                   All right? I'm just saying that  
8       for a number. It may not be the right number.  
9       But you put in "X" amount of dollars in there,  
10      you'll own "X" piece of this specific LLC.

11                  If we sell it for a specific  
12      amount, double the money, you'll make double  
13      your money.

14                  If we sell it for three times,  
15      you'll make three times your money.

16                  And so on and so forth.

17           Q       All right. Now, were you intending  
18      that he participate in the general ownership of  
19      the Waverly, or was there any specific element  
20      to which -

21                   MR. CONWAY:   Max. Max. It's  
22      a simple question.

23                   MR. FOLKENFLIK:   No. It  
24      isn't.

25           Q       All right. Were you suggesting that

D. Holzer - March 28, 2012

Page 74

Page 74

1 he participate in the ownership interest of the  
2 Waverly?

3 A Yes.

4 Q Okay.

5 MR. FOLKENFLIK: Objection.  
6 By "the Waverly," do you mean the  
7 LLC or the apartment complex that  
8 bore that name?

9 THE WITNESS: Yes.

10 MR. FOLKENFLIK: Which, which  
11 is it? The LLC or?

12 THE WITNESS: LLC.

13 MR. CONWAY: Okay. Max, I  
14 have to ask you to just save your  
15 questions until your opportunity.

16 MR. FOLKENFLIK: You gotta  
17 get it -

18 MR. CONWAY: I understand. I  
19 understand.

20 MR. FOLKENFLIK: Counselor,  
21 you gotta get the corporate  
22 structure right. When you ask  
23 questions that are susceptible to  
24 confusing answers, it's  
25 objectionable.

D. Holzer - March 28, 2012

Page 75

Page 75

1 MR. CONWAY: That's what we  
2 do.

3 MR. FOLKENFLIK: No. That's  
4 not what we do.

5 MR. CONWAY: Yes. We want  
6 accuracy.

7 MR. FOLKENFLIK: We want the  
8 truth.

9 MR. CONWAY: We want  
10 accuracy.

11 THE WITNESS: You don't have  
12 to tell me that. I understand what  
13 you're trying to do.

14 BY MR. CONWAY:

15 Q The phrase, Waverly Phase I,  
16 Fingerhut-Holzer The Waverly I, LLC, what was  
17 that?

18 A It was an investment vehicle to buy  
19 a certain amount of apartment units in a  
20 particular Saint Augustine real estate  
21 development, initiated by a gentleman down  
22 there named Joe Buckley.

23 Q And Joe Buckley -

24 A Ron Buckley.

25 Q Ron Buckley.

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D. Holzer - March 28, 2012

Page 76

Page 76

1 Was Ron Buckley a real estate  
2 investor in Saint Augustine?

3 A He was a developer.

4 Q Now, Mr. Buckley and his  
5 organization would be the owner of the land and  
6 develop the product?

7 A I don't know the infrastructure of  
8 Trident Realty. That was the name of theirs.

9 Q But Fingerhut-Holzer The Waverly I  
10 was an investment vehicle to buy apartments in  
11 that structure?

12 A That's correct.

13 Q They were not owners of the  
14 structure. They would be owners of the  
15 apartments?

16 A Who are you saying "they," Waverly?

17 Q The investors in Fingerhut-Holzer  
18 The Waverly I.

19 A That's correct.

20 Q So, have you ever met Ron Buckley?

21 A Yes.

22 Q And was Mr. Buckley's interest  
23 solely real estate and development, as best you  
24 know?

25 A Yes.

D. Holzer - March 28, 2012

Page 77

Page 77

1 Q And was he responsible, also, for  
2 Fingerhut-Holzer, for that which constituted  
3 the investments of Fingerhut-Holzer The Waverly  
4 II, LLC?

5 A Was he responsible?

6 MR. FOLKENFLIK: Objection.  
7 Just let me note my objection. You  
8 have it backwards.

9 MR. CONWAY: Okay. Well,  
10 straighten it out.

11 MR. FOLKENFLIK: Was Waverly  
12 a single real estate development?

13 THE WITNESS: Was the Waverly  
14 - say it again. I'm sorry.

15 MR. FOLKENFLIK: The Waverly  
16 -

17 THE WITNESS: Yes.

18 MR. FOLKENFLIK: - that Mr.  
19 Buckley created as a developer  
20 through Trident, was that a real  
21 estate development series of  
22 condominium complexes?

23 THE WITNESS: That was what  
24 Trident Realty, who was the  
25 principal owner being Ron Buckley,

D. Holzer - March 28, 2012

Page 78

Page 78

1 created or was trying to create in  
2 that village in Saint Augustine.

3 MR. FOLKENFLIK: Okay.

4 And that was referred to as The  
5 Waverly. Correct?

6 THE WITNESS: Yeah. I'm  
7 saying the LLC was The Waverly, but  
8 that was The Waverly.

9 MR. FOLKENFLIK: But  
10 Fingerhut-Holzer Waverly I, LLC  
11 bought certain condominium units or  
12 other property within The Waverly  
13 structure; correct?

14 THE WITNESS: Correct.

15 MR. FOLKENFLIK: And  
16 Fingerhut-Holzer Waverly II bought  
17 different condominium units -

18 THE WITNESS: Correct.

19 MR. FOLKENFLIK: - within the  
20 same development.

21 THE WITNESS: Which, we went  
22 through that, why we created the  
23 LLC.

24 BY MR. CONWAY:

25 Q That's what I'm here to find out.

D. Holzer - March 28, 2012

Page 79

Page 79

1           A       Yes. Okay. So, now, are you good  
2       on that?

3           Q       Yes.

4           A       Okay.

5           Q       So Trident Realty was the real  
6       estate investor - the real estate developer who  
7       was building that which was the Waverly  
8       complex?

9           A       Correct.

10          Q       And Fingerhut-Holzer Partners  
11       created two LLCs, the purposes of which were to  
12       buy units in that developing property?

13          A       Yes. You got it now.

14          Q       And were there multiple  
15       participants in Fingerhut Waverly I and  
16       Fingerhut Waverly II?

17          A       Yes.

18          Q       So, if two or more individuals were  
19       interested in purchasing apartments there, they  
20       would participate within Waverly I or Waverly  
21       II?

22          A       Correct.

23          Q       Was there a limit as to how many  
24       participants could be in the Waverly I  
25       project?

D. Holzer - March 28, 2012

Page 80

Page 80

1           A       I don't recall the total amount of  
2           money, so if we reached the saturation point  
3           in terms of we raised the total amount of  
4           money, then it was cut off.

5                       So there was a limit. Yes. The  
6           answer's a limit.

7           Q       Okay. Do you remember how -

8           A       How many?

9           Q       Yes.

10          A       No.

11          Q       Now, different parties would invest  
12          in the Waverly I and, if you wanted, in the  
13          Waverly II. Correct?

14          A       It wasn't an open-ended investment.  
15          Is that what you're implying?

16          Q       Well, if an individual was  
17          acceptable to you, you would put them into one  
18          of those?

19          A       Well, there was no Waverly II  
20          unless Waverly I was done. Once Waverly I was  
21          done, that was the end of that.

22          Q       All right.

23          A       Then you moved to Waverly II.

24          Q       Did you finish Waverly I?

25          A       Well, it's Waverly II. Yes.



D. Holzer - March 28, 2012

Page 81

Page 81

1 Q Okay.

2 How many units were involved in  
3 Waverly I?

4 A I don't recall.

5 Q Can you describe the property that  
6 was being built in Florida?

7 Was it townhouses?

8 Was it apartment houses?

9 A It was a combination of townhouses  
10 and single-family homes.

11 Q So everything would be two stories  
12 or below?

13 A I don't recall the exact structure.  
14 I'm sorry.

15 MR. FOLKENFLIK: I think we  
16 have plans -

17 THE WITNESS: I'm sure you  
18 do.

19 MR. FOLKENFLIK: - that  
20 describe what the structures looked  
21 like.

22 A There were five in the last ones,  
23 as I recall.

24 Q Five stories tall?

25 A I think.

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D. Holzer - March 28, 2012

Page 82

Page 82

1           Q       Now, on the occasion that you  
2       discussed this with Mr. Rapillo, were you  
3       suggesting that he make a purchase of one of  
4       these apartments?

5           A       It's not of an apartment.

6           Q       It's not of an apartment?

7           A       The direct investment was in the  
8       Waverly.

9                   So he wasn't buying an apartment,  
10       per se, he was buying a piece of the total  
11       investment, which included, again, multiple  
12       units and/or single-family homes, and/or  
13       parking spaces.

14                   MR. FOLKENFLIK:   Commercial  
15       spaces?

16                   THE WITNESS:    I don't recall  
17       if we had any participation in  
18       commercial space. I don't think so.  
19       But I know we did buy parking  
20       spaces, individual units, and  
21       single-family homes.

22       BY MR. CONWAY:

23           Q       All right.

24                   So if I put in ten-dollars, I  
25       wasn't buying an apartment, I was buying a

D. Holzer - March 28, 2012

Page 83

Page 83

1 portion of your investment?

2 A Correct.

3 Q And where was the money-making  
4 potential for Fingerhut-Holzer Partners in this  
5 project?

6 A Oh. For the partnership itself?

7 Q Right.

8 A I don't remember how the LLC was  
9 set up. If we took a certain portion of the  
10 profit or was there a fee involved, I can't  
11 remember. I cannot recall, off the top of my  
12 head.

13 So not only did Fingerhut-Holzer  
14 participate in the Waverly I and II as a  
15 proprietary interest -

16 You know what that is. Right?

17 Q Yes.

18 Q But we also were going to get a  
19 percentage of some fee pay-out I cannot  
20 remember.

21 Q All right.

22 So there would be profit back from  
23 an investment like Fingerhut The Waverly I,  
24 back to Fingerhut-Holzer Partners?

25 A Yeah. There would be a fee paid.

D. Holzer - March 28, 2012

Page 84

Page 84

1 It's not a profit.

2 See, you have to understand the  
3 difference between profit and fees.

4 Q I understand.

5 A Okay. So you wanna rephrase that  
6 question?

7 MR. FOLKENFLIK: Can I make  
8 it easy for you?

9 THE WITNESS: Yeah.

10 MR. FOLKENFLIK: Who was the  
11 managing member of the  
12 Fingerhut-Holzer Waverly I, LLC?

13 THE WITNESS: The actual  
14 managing member?

15 MR. FOLKENFLIK: Yeah.

16 THE WITNESS: Was Barry.

17 MR. FOLKENFLIK: Personally  
18 or through an LLC?

19 THE WITNESS: Through the  
20 LLC.

21 MR. FOLKENFLIK: Which LLC?

22 THE WITNESS: The I and II.

23 MR. FOLKENFLIK: Okay.

24 THE WITNESS: He was the one  
25 managing.

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D. Holzer - March 28, 2012

Page 85

Page 85

1 MR. FOLKENFLIK: And the  
2 management of the LLC,  
3 Fingerhut-Holzer Waverly I was who?

4 THE WITNESS: It was  
5 Fingerhut-Holzer Partners.

6 MR. FOLKENFLIK: Fingerhut-  
7 Holzer Partners was the manager?

8 THE WITNESS: That's correct.

9 MR. FOLKENFLIK: And so the  
10 managing -

11 THE WITNESS: The managing  
12 person of that entity was Barry. So  
13 the managing - he's correct.

14 MR. FOLKENFLIK: So the  
15 managing member would be paid -

16 THE WITNESS: Would be paid a  
17 fee. That's correct.

18 MR. FOLKENFLIK: And if there  
19 was a fee paid -

20 THE WITNESS: That's who it  
21 was paid to.

22 Are we straight on that?

23 MR. FOLKENFLIK: And the fee  
24 would be paid on the sale of the  
25 assets -

D. Holzer - March 28, 2012

Page 86

Page 86

1 THE WITNESS: Correct.

2 MR. FOLKENFLIK: - of the  
3 Waverly I.

4 THE WITNESS: And the LLC  
5 would be closed down.

6 MR. FOLKENFLIK: And the LLC  
7 would be closed down. The managing  
8 member, Fingerhut-Holzer Partners,  
9 LLC would receive a fee, and all of  
10 the members, the investors, would  
11 receive their participation?

12 THE WITNESS: Correct.

13 BY MR. CONWAY:

14 Q Where are the documents that  
15 constitute the corporate jacket and corporate  
16 records of Fingerhut-Holzer Partners?

17 A I couldn't tell you. They existed,  
18 that I can tell you.

19 And I can't tell you where there  
20 are.

21 Q Were they kept at the  
22 Fingerhut-Holzer firm?

23 A They were kept at the firm.

24 Q Okay. And did the firm have a safe  
25 or a vault or a secured space where these

D. Holzer - March 28, 2012

Page 87

Page 87

1 records would be kept?

2 A We had a secured space.

3 Q Were you around when the

4 Fingerhut-Holzer office space was closed? Or

5 were you - were you -

6 A Incarcerated?

7 Q Incarcerated. Yes.

8 A You can say it.

9 Q Good.

10 A I don't know. I - I wasn't around,

11 but I don't know if they were still domiciled

12 there or not. I tend to doubt it.

13 Q All right.

14 Do you know where the records went

15 for Fingerhut-Holzer Partners?

16 A Like I said, I wasn't there for the

17 actual closing, so I can't tell you where the

18 physical records are now.

19 Q Do you know where the -

20 I'm just gonna ask this, and I know

21 the answer.

22 Do you have any idea where the

23 records of Fingerhut-Holzer Incorporated are?

24 A No.

25 Q Do you have any idea where the

D. Holzer - March 28, 2012

Page 88

Page 88

1 records of Fingerhut-Holzer Equities,  
2 Incorporated are?

3 A No.

4 Q Do you have any idea where the  
5 records of Fingerhut- Holzer Fund L.P. are?

6 A No.

7 Q Do you have any idea where the  
8 records of Fingerhut-Holzer The Waverly I, LLC  
9 are?

10 A No.

11 Q Do you have any idea where the  
12 records of Fingerhut-Holzer The Waverly II, LLC  
13 are?

14 A No.

15 Q Now, was there any infringement on  
16 Mr. Fingerhut's access to these records at the  
17 time that Fingerhut-Holzer Partners ceased  
18 operation?

19 A What do you mean?

20 I don't understand the question.

21 Q Okay.

22 Was there anything that would have  
23 imposed upon Mr. Fingerhut's access to these  
24 records at the time that Fingerhut-Holzer  
25 closed? Did anybody -



D. Holzer - March 28, 2012

Page 89

Page 89

1 A Give me an example.

2 Q Did anybody prevent him from gaining  
3 access to these records?

4 A I don't know the answer to that.

5 Q Have you ever discussed where these  
6 records were, with Mr. Fingerhut?

7 A I'm just trying to remember if he  
8 visited me in jail and we talked about that.  
9 No. He never visited me after that.

10 Q He visited you once in jail?

11 A No.

12 Q Oh. Oh.

13 A So we never talked.

14 Q I thought you said you didn't  
15 remember if he came to see you.

16 Did he visit you in jail or not?

17 A No.

18 Q Okay.

19 So, on the occasion of your arrest,  
20 Fingerhut-Holzer Partners was still around,  
21 still in operation?

22 A I'm not sure if it was still  
23 Fingerhut-Holzer Partners anymore.

24 Q Well, what was the name on the door?

25 A I don't know.

D. Holzer - March 28, 2012

Page 90

Page 90

1 Q Well, there was a time when it was  
2 Fingerhut-Holzer Partners?

3 A Correct.

4 MR. FOLKENFLIK: LLC.

5 Q LLC.

6 Are you aware of the name on the  
7 door changing at any time?

8 A No. I would assume - I would  
9 assume Holzer was taken off.

10 Q After the arrest?

11 A I don't know that.

12 Q Okay. Do you know if there was a  
13 successor corporation to Fingerhut-Holzer  
14 Partners?

15 A No.

16 Q Now, you're speaking to Mr. Rapiello  
17 about making an investment in Fingerhut-Holzer  
18 The Waverly I.

19 And did Mr. Rapiello indicate a  
20 desire to make such a investment?

21 A Yes.

22 Q Do you recall what his initial  
23 investment was?

24 A I don't recall.

25 Q If I were to tell you that on

D. Holzer - March 28, 2012

Page 91

Page 91

1       October 19th, two-thousand-and-five, he made a  
2       three-hundred-thousand-dollar investment, does  
3       that sound familiar?

4             A       That does sound familiar.   Yes.

5             Q       Can you identify this document?

6             A       (The witness examined the  
7       document.)

8                     MR. CONWAY:    Could we have  
9       this marked Plaintiff's 1?

10                    (AT which time, Plaintiff's  
11       Exhibit 1, Money Transfer Document  
12       dated October 19, 2005, consisting  
13       of two pages, was marked for  
14       identification.)

15   BY MR. CONWAY:

16             Q       Can you identify this document?

17                    MR. FOLKENFLIK:   Why don't we  
18       state, for the record, that you  
19       marked for identification -

20                    MR. CONWAY:    Well, it's been  
21       identified.   This is Exhibit 1,  
22       Plaintiff's Exhibit 1.

23                    MR. FOLKENFLIK:   Plaintiff's  
24       Exhibit 1, marked for  
25       identification, which appears to be

D. Holzer - March 28, 2012

Page 92

Page 92

1 a composite exhibit?

2 MR. CONWAY: Two pages.

3 MR. FOLKENFLIK: Thank you.

4 A (The witness examined the  
5 document.)

6 What do you want me to tell you on  
7 this?

8 Q Have you ever seen that document  
9 before today?

10 A No. But I -I know of it.

11 Q You do. Okay.

12 A Yeah.

13 Q And is that a record of a  
14 three-hundred-thousand-dollar transfer from Mr.  
15 and Mrs. Rapillo?

16 A Yes.

17 Q On the Waverly investment?

18 MR. FOLKENFLIK: Objection.

19 No foundation. You can answer.

20 THE WITNESS: Should I  
21 answer?

22 MR. FOLKENFLIK: You can  
23 answer.

24 A Yes.

25 Q Okay. Now, who are Foley & Lardner?

D. Holzer - March 28, 2012

Page 93

Page 93

1           A       Foley & Lardner was the escrow  
2           agent for Trident Realty, as I remember, but  
3           I'm not one-hundred per cent sure.

4           Q       Are Foley & Lardner a law firm?

5           A       Yes.

6           Q       Now, did Foley & Lardner participate  
7           in the management of Trident Realty or any of  
8           its participators, other than being an escrow  
9           agent?

10          A       No.

11                   As - as far as I know, no.

12          Q       Now, when these funds were  
13           transferred on a Citibank reference, do you  
14           remember who held the Fingerhut-Holzer Partners  
15           bank accounts at the time?

16                   There are two references here.

17          A       It would be J.P. Morgan Stanley  
18           Trust. Wachovia -

19                   Look. One reference is gonna be  
20           from the receiving end, which is, I assume,  
21           Wachovia was Foley & Lardner's bank.

22                   A law firm doesn't hold it, a bank  
23           holds it in escrow for Foley & Lardner. So,  
24           I'm assuming that Wachovia is the actual bank  
25           that held the escrow money for Foley &

D. Holzer - March 28, 2012

Page 94

Page 94

1 Lardner.

2 Q Now, the year of transfer here is  
3 October 19th, two-thousand-and-five.

4 A Yes.

5 Q Fingerhut-Holzer Partners was still  
6 in operation at the time?

7 A Yeah.

8 Q Okay. Do you recall having income  
9 for yourself in the year 2004?

10 A Do I recall?

11 Q Having income.

12 A I don't recall. I was in trading.  
13 I don't know.

14 Q All right. Did you file taxes for  
15 the year 2004?

16 A Yes.

17 Q Do you know where those taxes are  
18 today?

19 A They're in the U.S. government. I  
20 don't know.

21 MR. FOLKENFLIK: The taxes?

22 Q All right.

23 Do you have copies of your taxes?

24 MR. FOLKENFLIK: You mean tax  
25 returns?

D. Holzer - March 28, 2012

Page 95

Page 95

1 MR. CONWAY: Tax returns.

2 A Yeah.

3 Q Okay.

4 Are those taxes in the possession  
5 of your wife, as best you know?

6 MR. FOLKENFLIK: Tax returns?

7 MR. CONWAY: Tax returns,  
8 yes.

9 A No. They're probably in possession  
10 of J. H. Cohn now. I forget if I was using  
11 them at the time.

12 Q J.H. Cohn is an accountant?

13 A They're an accounting firm.

14 Q And where are they?

15 A They're in - the main office is in,  
16 what is it, Parsippany, New Jersey?  
17 Somewhere around there. Parsippany, Roseland.  
18 Roseland. Roseland, New Jersey.

19 Q And for how long had you used J.H.  
20 Cohn as your accountant?

21 A Long time. Twenty years, maybe.

22 Q Are you still using them at this  
23 time -

24 A No.

25 Q - or your wife?

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D. Holzer - March 28, 2012

Page 96

Page 96

1 A I use one of the former partners.

2 Q And who is that?

3 A John Lotito.

4 Q And where does Mr. Lotito have his  
5 place of business?

6 A Mahwah, New Jersey.

7 Q Now, when this  
8 three-hundred-thousand-dollars was transferred,  
9 to your knowledge, was it received by  
10 Fingerhut-Holzer or was it sent directly to the  
11 escrow account?

12 MR. FOLKENFLIK: Objection.

13 A No. It's sent right there  
14 (indicating) where it went.

15 Q All right.

16 You're indicating the Wachovia Bank  
17 in Florida was the destination?

18 A Yeah. Exactly.

19 MR. FOLKENFLIK: And the name  
20 of the account is Foley & Lardner,  
21 LLP -

22 THE WITNESS: Trust account.

23 MR. FOLKENFLIK: - in Trust  
24 account.

25 A We're clear on that. Right?

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D. Holzer - March 28, 2012

Page 97

Page 97

1 Q I'm clear.

2 A Okay.

3 Q Now, do you recall what your income  
4 was in 2005?

5 MR. FOLKENFLIK: Asked and  
6 answered.

7 Q Okay. Are you -

8 MR. FOLKENFLIK: And, I might  
9 add, totally irrelevant to anything.  
10 I mean, this is all very  
11 interesting, but if we could have a  
12 higher percentage of questions  
13 relating to the Rapiello case -

14 MR. CONWAY: We're getting  
15 there.

16 MR. FOLKENFLIK: - that would  
17 be helpful.

18 BY MR. CONWAY:

19 Q Sir, there was a second transfer by  
20 Mr. Rapiello.

21 MR. CONWAY: Could we have  
22 this marked as Plaintiff's 2?

23 (At which time, Plaintiff's  
24 Exhibit 2, Money Transfer Document  
25 Dated December 15, 2005, was marked

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D. Holzer - March 28, 2012

Page 98

Page 98

1 for identification.)

2 BY MR. CONWAY:

3 Q If you would, take a look at  
4 this.

5 MR. FOLKENFLIK: This is  
6 Exhibit?

7 MR. CONWAY: Exhibit 2.

8 MR. FOLKENFLIK: Two.

9 A (The witness examined the  
10 document.)

11 Q Have you ever seen this document  
12 before?

13 A Maybe. I'm not sure. I don't  
14 remember.

15 Q All right.

16 Does the document indicate that, on  
17 December 15th, there was a transfer from Heidi  
18 Rapillo to the account of David and Leslie  
19 Holzer at J.P. Morgan Chase Bank?

20 A Correct.

21 Q In the sum of \$600,000?

22 A Six-hundred?

23 Q Next page.

24 A It says two-hundred here.

25 Q I thought it said six-hundred.

D. Holzer - March 28, 2012

Page 99

Page 99

1 A Where does it say on yours?

2 Why's it only say two-hundred?

3 MR. FOLKENFLIK: Can I see  
4 the exhibit, please?

5

6 (At which time, a discussion  
7 was held off the record.)

8

9 MR. CONWAY: Please mark  
10 these two also.

11 (At which time, Plaintiff's  
12 Exhibit 3, Money Transfer Document  
13 Dated January 31, 2006, was marked  
14 for identification.)

15 (At which time, Plaintiff's  
16 Exhibit 4, Money Transfer Document  
17 Dated March 23, 2006, was marked for  
18 identification.)

19 BY MR. CONWAY:

20 Q I'll ask you to take a look at  
21 document Number 2.

22 A I can make everybody's life real  
23 easy if you want me to make one statement.

24 MR. FOLKENFLIK: We'll give  
25 you an opportunity.

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D. Holzer - March 28, 2012

Page 100

Page 100

1           A       Okay. So what am I looking for  
2       here now?

3           Q       Take a look at that document.

4                   MR. FOLKENFLIK: Hold on.  
5       Hold on.

6                   If you ask him to look at  
7       something, identify it by exhibit  
8       number.

9                   MR. CONWAY: Exhibit Number 2  
10       in front of him, dated December  
11       15th, 2005.

12          A       (The witness examined the  
13       document.)

14                   Okay.

15                   And that's from Heidi Rappillo to  
16       David and Leslie Holzer, amount is 600,000,  
17       and it went to Citibank -

18          Q       Went from Citibank to J.P. Morgan  
19       Chase.

20          A       Who wrote this on the bottom here  
21       (indicating)?

22          Q       I don't know.

23          A       (The witness examined the  
24       document.)

25                   MR. FOLKENFLIK: Is that your

D. Holzer - March 28, 2012

Page 101

Page 101

1                   handwriting, sir, the notes?

2                   MR. CONWAY:    No.

3           A        Do you know who wrote the notes?

4           Q        No.

5                   We're fine.   Probably Heidi's.

6           A        Well, we don't know.   We don't know  
7   what it means.

8           Q        No.   It's a reference to the prior  
9   transfer.

10          A        The one we talked about before?

11          Q        Yeah.   The one we talked about  
12   already.

13          A        2921058968?

14                   Is that the transfer number, the  
15   first transfer we were talking about?   292 -

16          Q        Yes.

17          A        - 1058968?

18          Q        Yes.   That's correct.

19          A        So we're all in agreement that this  
20   is the -

21          Q        Yeah.

22          A        - reference number.   Okay.

23                   MR. FOLKENFLIK:   You just

24                   have to testify about what you

25                   understand from the document, not be

D. Holzer - March 28, 2012

Page 102

Page 102

1 concerned -

2 THE WITNESS: Right.

3 BY MR. CONWAY:

4 Q To your knowledge, what was the  
5 purpose of this transfer?

6 What were Mr. and Mrs. Rapiello  
7 involving themselves in with this transfer?

8 A They thought they were - as I  
9 recall, this was gonna be in Waverly also.

10 Q All right.

11 And, instead, it was directed to  
12 your personal account?

13 A That's correct.

14 Q And why was that, sir?

15 A Because I lied to them.

16 Q Now, let's take a step back, if we  
17 may.

18 You were convicted of a crime  
19 involving Mr. Fingerhut, as well as others.

20 What was the nature of the crime,  
21 for which you were sentenced, involving  
22 Mr. Fingerhut?

23 A What was the nature of the crime?

24 Q Right.

25 You've been convicted already.

D. Holzer - March 28, 2012

Page 103

Page 103

1 Nothing else can happen to you.

2 MR. FOLKENFLIK: Can I - can

3 I -

4 BY MR. CONWAY:

5 Q Could you describe -

6 MR. FOLKENFLIK: I just wanna  
7 hear the question.

8 BY MR. CONWAY:

9 Q Could you describe -

10 MR. CONWAY: I'll start -  
11 I'll say it again.

12 MR. FOLKENFLIK: Yes.

13 BY MR. CONWAY:

14 Q Would you describe the circumstances  
15 which gave rise to a criminal arrest in your  
16 involvement with Mr. Fingerhut?

17 MR. FOLKENFLIK: Objection.

18 BY MR. CONWAY:

19 Q What went on between the two of you  
20 that gave rise to the -

21 MR. FOLKENFLIK: Which "two  
22 of you"?

23 BY MR. CONWAY:

24 Q Mr. Fingerhut and yourself.

25 MR. FOLKENFLIK: Objection.

D. Holzer - March 28, 2012

Page 104

Page 104

1 Assumes facts not in evidence.

2 BY MR. CONWAY:

3 Q All I wanna do is -

4 A I don't recall.

5 Q Okay. What was the nature of the  
6 financial issue, between yourself and  
7 Mr. Fingerhut, that resulted in you being  
8 arrested?

9 A I don't recall.

10 Q Okay. Did you owe Mr. Fingerhut  
11 money?

12 A When?

13 Q On or about December 15th of 2005.

14 A I don't recall.

15 Q Do you have any recollection why it  
16 is that you're in jail?

17 A I took money that didn't belong to  
18 me.

19 Q From who?

20 A From Heidi Rapillo and John  
21 Rapillo.

22 Q Anyone else?

23 A Amongst others.

24 Q Did you take money from  
25 Mr. Fingerhut?



D. Holzer - March 28, 2012

Page 105

Page 105

1 A Did I take it?

2 Q Did you gain control of it in any  
3 way?

4 A Did I gain control of it? You  
5 mean, did -

6 Just extrapolate that out a little  
7 bit.

8 Q All right. What is the nature of  
9 your relationship with Mr. Fingerhut that  
10 resulted in your being arrested?

11 A I don't know.

12 MR. FOLKENFLIK: Mr. Holzer,  
13 did you plead guilty -

14 THE WITNESS: Yes.

15 MR. FOLKENFLIK: - to any  
16 crimes concerning the transactions  
17 you had with Mr. Fingerhut?

18 THE WITNESS: Yes.

19 MR. FOLKENFLIK: What was the  
20 nature of the transactions to which  
21 you pleaded guilty?

22 THE WITNESS: Stole money.

23 MR. FOLKENFLIK: From?

24 THE WITNESS: Mr. Fingerhut.

25 MR. FOLKENFLIK: Okay.

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D. Holzer - March 28, 2012

Page 106

Page 106

1 BY MR. CONWAY:

2 Q Okay. How much was stolen?

3 A Twelve - I don't - I don't recall  
4 the exact amount.

5 Q And -

6 A More than ten-million.

7 Q And how did you do that?

8 A I don't recall the exact nature of  
9 how I actually did it.

10 MR. FOLKENFLIK: Can you  
11 explain, in your own words,  
12 approximately, what occurred in  
13 connection with the stealing of  
14 money from Mr. Fingerhut that you  
15 just testified to?

16 THE WITNESS: Okay. You want  
17 a whole lengthy --

18 BY MR. CONWAY:

19 Q Yeah. If you could.

20 MR. FOLKENFLIK: As long or  
21 as short as you think is necessary  
22 to explain it.

23 THE WITNESS: Okay. I'm  
24 trying to think.

25 A I'll invoke the fifth here, and I

D. Holzer - March 28, 2012

Page 107

Page 107

1 can.

2 Q Crime is over.

3 A Well, what if I say something that  
4 wasn't directly related to that?

5 Q You're covered.

6 A Who says I'm covered? I'm taking  
7 the fifth.

8 Next question.

9 Q Did there come a time that you came  
10 to be at odds with Mr. Fingerhut in your  
11 business relationship?

12 A I don't recall.

13 Q Did there come a time when you were  
14 attempting to return money to Mr. Fingerhut?

15 A I don't recall.

16 Q What happened to the money that Mr.  
17 and Mrs. Rapillo sent you on December 15th?

18 A What happened to the money, that  
19 particular monies?

20 Q Yes.

21 A I don't remember.

22 Q Was that money used for personal  
23 benefit?

24 A Possibly.

25 Q Is any of that money still in your

D. Holzer - March 28, 2012

Page 108

Page 108

1 possession?

2 A No.

3 Q Did any of that money -

4 Was any of that money given to

5 Mr. Fingerhut?

6 A No.

7 Q Take a look at -

8 MR. FOLKENFLIK: Just to save

9 time in the future - nor any entity

10 affiliated with him?

11 THE WITNESS: No.

12 BY MR. CONWAY:

13 Q Take a look at document Number 3,  
14 the January 31st.

15 A That I can recall.

16 I have to quantify that last one.

17 I'm sorry. You wanna repeat the  
18 question?

19 MR. FOLKENFLIK: No. That's  
20 fine.

21 A (The witness examined the  
22 document.)

23 Okay. This is January 31st, '06?

24 Q Right.

25 And does that indicate a transfer

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D. Holzer - March 28, 2012

Page 109

Page 109

1 of funds from the Rapiillos to you?

2 A Correct.

3 Q And how much was that?

4 A How much was it?

5 Two-hundred-thousand-dollars.

6 Q And what was the purpose of -

7 In your dealings with them, what  
8 was the nature, what was the intent for that  
9 money?

10 A I don't remember, for this  
11 particular amount.

12 Q Take a look at transfer Number 4.

13 A (The witness examined the  
14 document.)

15 MR. FOLKENFLIK: Would you  
16 please identify the document.

17 MR. CONWAY: Yes. It's  
18 document Number 4.

19 MR. FOLKENFLIK: Exhibit  
20 Number 4?

21 MR. CONWAY: Exhibit Number  
22 4. Exhibit Number 4, dated March -

23 THE WITNESS: March 23rd,  
24 '06.  
25

D. Holzer - March 28, 2012

Page 110

Page 110

1 BY MR. CONWAY:

2 Q March 23rd, does that indicate a  
3 transfer of \$800,000?

4 A Yes.

5 Q And were those funds transferred to  
6 your personal account again?

7 A Yes.

8 Q And what happened to those funds?

9 A Don't recall.

10 Q Are you familiar with a term called  
11 "VCampus"?

12 A Yes.

13 Q What is VCampus?

14 A VCampus?

15 Q Yeah.

16 A VCampus was an online education  
17 company.

18 Q And who were the principals of  
19 VCampus?

20 A The principals -

21 It was publicly traded. There was  
22 no principals.

23 VCampus was a publicly traded  
24 company trading on the over-the-counter  
25 market.

D. Holzer - March 28, 2012

Page 111

Page 111

1 Q And did Fingerhut-Holzer Partners  
2 have an interest in VCampus?

3 A Fingerhut-Holzer Partners? No.

4 Q Did Mr. Fingerhut have an interest  
5 in that?

6 A Yes.

7 Q What was the interest that  
8 Mr. Fingerhut had?

9 A He owned stock.

10 He owned debt, also.

11 Q He was a creditor of the company, is  
12 that what you mean?

13 A Yes. In effect, he was.

14 Q And where was the headquarters of  
15 VCampus?

16 A Virginia. Reston, Virginia, I  
17 think it was.

18 Q Reston, Virginia?

19 A I think. I'm not sure.

20 Q Did you yourself own stock in  
21 VCampus?

22 A Yes.

23 Q How much did you own?

24 A I can't recall. Maybe,  
25 nine-million shares.

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D. Holzer - March 28, 2012

Page 112

Page 112

1 Q And what were those shares trading  
2 at at their height?

3 A At their height?

4 Q Yes.

5 Q During the period I owned them?

6 Are you asking me during the period  
7 that I owned them?

8 Q During the period you owned them.

9 A Probably -

10 I can't answer that question. The  
11 nine-million shares was accumulated over the  
12 course of a few years. The stock fluctuated.

13 So when I owned nine-million  
14 shares, the high point for the stock might  
15 have been three.

16 When I owned four-million shares,  
17 it might have been 12.

18 So it's not a question that you can  
19 answer with any accuracy.

20 Q All right.

21 Did you own a high of  
22 twelve-million shares?

23 A No. I said nine-million.

24 Q Oh. I thought you indicated -

25 Was nine-million the highest -



D. Holzer - March 28, 2012

Page 113

Page 113

1 A Yes.

2 Q Was VCampus associated with any  
3 university or organization?

4 A Associated in what way?

5 Q Was it affiliated so that -

6 A No.

7 Q Was any of the \$800,000 that was  
8 transferred on March 15th of 2006 given to  
9 Mr. Fingerhut?

10 A No.

11 Q Did all of that money remain with  
12 you?

13 A Remain with me?

14 Well, it did not go to  
15 Mr. Fingerhut, right.

16 Q Where did it go?

17 A It went into different various  
18 assorted and sundry items. I just don't  
19 recall.

20 Q Such as?

21 A Could have gone into VCampus.

22 Could have gone into Waverly.

23 Could have gone into gasoline.

24 Could have gone into the

25 supermarket, groceries.

D. Holzer - March 28, 2012

Page 114

Page 114

1 I don't recall the exact  
2 destination of the monies.

3 MR. FOLKENFLIK: When you say  
4 "could have gone" these places, it  
5 was treated as your personal money?

6 THE WITNESS: Yes. Did not -  
7 he asked me if it went to  
8 Mr. Fingerhut.

9 MR. FOLKENFLIK: Yes.

10 THE WITNESS: I said, no.  
11 The answer is no.

12 MR. FOLKENFLIK: It was  
13 treated as your money.

14 THE WITNESS: That's correct.

15 MR. FOLKENFLIK: And you did  
16 with it what you did with it.

17 THE WITNESS: That's correct.

18 MR. FOLKENFLIK: And that's  
19 true of the prior 200,000.

20 THE WITNESS: Correct.

21 MR. FOLKENFLIK: Correct?

22 THE WITNESS: That's correct.

23 MR. FOLKENFLIK: True of all  
24 the money you got?

25 THE WITNESS: That's correct.

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D. Holzer - March 28, 2012

Page 115

Page 115

1 MR. FOLKENFLIK: Same answer  
2 going forward?

3 THE WITNESS: That's correct.  
4 Going forward, you got the same  
5 answer.

6 BY MR. CONWAY:

7 Q Now, did any of that find its way to  
8 Mr. Fingerhut?

9 MR. FOLKENFLIK: Asked and  
10 answered. He can answer again.

11 A No.

12 Q And when were you arrested?

13 A What day?

14 Q Yeah. Do you know?

15 A May - May 22nd of '08.

16 Should be, like, my day that lives  
17 in infamy. Right?

18 Yeah. May 22nd of '08, I think.

19 Pretty sure.

20 Q When was the last time you saw  
21 Mr. Fingerhut before today?

22 A Before today?

23 Maybe, January of '08 or December  
24 of '07, or thereabouts.

25 Q And where did you meet him, where

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D. Holzer - March 28, 2012

Page 116

Page 116

1 did you see him?

2 A I don't recall. Probably, the  
3 office.

4 Q All right. This is before your  
5 arrest?

6 A That's before I was arrested.

7 Q And how did the police come to learn  
8 of any criminal activity on your part?

9 A I would hazard a guess as to say  
10 that it was instigated by a private  
11 investigator that Barry Fingerhut hired.

12 Q Do you know the name of the  
13 gentleman?

14 A No.

15 Q And did the investigator contact  
16 you?

17 A Did he contact me?

18 Q Yes.

19 Did he contact you in any way in  
20 his investigation?

21 A Well, yeah. We had a meeting.

22 Q You and he? Where was that?

23 A In the office.

24 Q And what was the nature of the  
25 discussion?

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D. Holzer - March 28, 2012

Page 117

Page 117

1           A       How I stole money from various  
2 different people.

3           Q       All right.

4                   And you don't remember the name of  
5 this investigator?

6           A       I didn't hire him. No.

7           Q       Well, he obviously identified  
8 himself to you when you were speaking to him.

9           A       I don't remember. You could stick  
10 me with 14 pins, I wouldn't remember the guy's  
11 name, nor would I care.

12          Q       Do you know Barry and Charlotte  
13 Pessar (Phonetic Spelling)?

14          A       Pessar?

15          Q       Pessar.

16          A       Yes.

17          Q       And who are they?

18          A       Friends of mine; were previous  
19 friends of mine.

20          Q       And what was your relationship with  
21 Mr. and Mrs. Pessar, for investment purposes?

22          A       Nothing.

23                   I mean, one instance, and it's a  
24 totally unrelated item to the  
25 Fingerhut-Holzer.

D. Holzer - March 28, 2012

Page 118

Page 118

1 Q What was the instance and how is it  
2 unrelated?

3 A Well, it was just me and them. Had  
4 nothing to do with Fingerhut-Holzer.

5 And I don't recall the actual name  
6 of the product.

7 Q Okay. Do you know a Barbara and  
8 Michael Zachman (Phonetic Spelling)?

9 A Yes.

10 Q And who are they?

11 A Friends of ours.

12 Q And did you have a business  
13 relationship with them?

14 A Business relationship? Yes.

15 Q Were they investors with you?

16 A Yes.

17 Q How much did they invest?

18 A I don't recall.

19 Q Did Mr. and Mrs. Pessar invest with  
20 you?

21 A Yes.

22 Q Did a Mr. Mel Block (Phonetic  
23 Spelling) invest with you?

24 A No.

25 Q Okay.

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D. Holzer - March 28, 2012

Page 119

Page 119

1 A The last question?

2 Q Okay.

3 About Mel Block?

4 A Yeah.

5 Ask that question again.

6 Q Did you have a business relationship  
7 with Mel Block?

8 A I invoke my Fifth Amendment right.

9 MR. CONWAY: Okay. I have  
10 nothing further.

11 MR. FOLKENFLIK: Just a  
12 couple quick questions.

13 THE WITNESS: Sure.

14 MR. FOLKENFLIK: Couple quick  
15 ones.

16 EXAMINATION

17 BY MR. FOLKENFLIK:

18 Q VCampus, was there any Fingerhut-  
19 Holzer subsidiary LLC that invested in VCampus?

20 A No.

21 Q Okay.

22 Do you recall any discussions with  
23 the Rapillos about a dinner theater?

24 A A what?

25 Q A dinner theater investment?

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D. Holzer - March 28, 2012

Page 120

Page 120

1 A A dinner theater?

2 Q Yes.

3 A Oh.

4 A dinner theater?

5 Q Yeah.

6 A The only discussion that -

7 Now, this whole dinner theater that  
8 came up was when I was talking about Waverly.  
9 It wasn't about a dinner theater, it was about  
10 a theater complex in one section of the  
11 Waverly.

12 I know - I had nothing to say about  
13 we were owning it, or anything. I said  
14 "There's a big theater there. It's gonna draw  
15 a lot of people there. There's a whole  
16 complex there that people are gonna wanna live  
17 near." Food courts and a Merrill Lynch  
18 complex that was right there.

19 I don't know where that came from.  
20 I saw it in there, and it was too late already  
21 to change it.

22 But it was in there, and you plead,  
23 and what am I gonna say, "Change that dinner  
24 theater thing"?

25 That thing was never impugned to be



D. Holzer - March 28, 2012

Page 121

Page 121

1 owned by anybody.

2 Q Okay.

3 Leaving aside what it was

4 represented to be, did any of the

5 Fingerhut-Holzer subsidiary entities invest in

6 a dinner theater?

7 A No.

8 Q Okay.

9 Waverly II, did any of the

10 Fingerhut-Holzer investment entities invest in

11 Waverly II?

12 A Waverly II? Yes.

13 Q Okay.

14 And were those investments, to the

15 extent that investors invested in that,

16 handled in the same way as Waverly I,

17 substantially?

18 A Yes.

19 Q And so that any investor who wished

20 to invest in Waverly II received subscription

21 documents?

22 A Yes.

23 Q And signed them?

24 A Yes.

25 Q Just as Waverly I.

D. Holzer - March 28, 2012

Page 122

Page 122

1                   And sent them to the investment  
2                   entity, right, for acceptance?

3                   A       Right.

4                   Q       And if they were accepted, then they  
5                   sent the check.

6                               Right?

7                   A       Correct.

8                   Q       And the check was sent, or a wire  
9                   was sent to Foley & Lardner's trust account  
10                  again?

11                  A       Escrow account. Correct.

12                  Q       The escrow.

13                               And they would receive documents  
14                  indicating they were members in the Waverly  
15                  II, LLC?

16                  A       I'm not sure if we ever sent out  
17                  documents or they used their cancelled check  
18                  as the confirmation of their involvement.

19                  Q       Okay.

20                  A       I'm really not sure of that.

21                  Q       One way or another, they -

22                  A       If they did have an involvement,  
23                  then it was either the cancelled check  
24                  themselves in the Waverly, or there were  
25                  documents, and that, Blum would have handled

D. Holzer - March 28, 2012

Page 123

Page 123

1 it. I don't know.

2 Q Okay.

3 And Waverly -

4 A Same thing -

5 Just let me say one other thing,  
6 please. Same thing with the subscription  
7 documents. I never actually saw those.

8 It would also, again, be Blum  
9 handling it.

10 Q Okay.

11 And, as far as you know, he handled  
12 them in a regular manner?

13 A As far as I know. Yes.

14 Q Completely on the up-and-up?

15 A Yes.

16 Q And the Waverly was not a success?

17 A It wasn't a - I don't know.

18 Q Oh. You don't know. Okay.

19 Whether the Waverly succeeded or  
20 failed, you have no idea?

21 A I don't know. I have no idea.

22 Q Okay. I'm just asking.

23 But you're not aware of it  
24 succeeding or failing for any improper -

25 A No. Not aware.

D. Holzer - March 28, 2012

Page 124

Page 124

1 Q As far as you know, everything about  
2 the Waverly investment was perfectly lawful and  
3 on the up-and-up?

4 A What was that next question?

5 Q As far as you know, everything about  
6 the Waverly investment was perfectly lawful, on  
7 the up-and-up?

8 A Yes.

9 Q And is that true of all the  
10 Fingerhut-Holzer subsidiaries?

11 A Yes.

12 MR. FOLKENFLIK: Give me just  
13 one second.

14  
15 (At which time, there was a  
16 brief pause in the proceedings.)

17  
18 MR. FOLKENFLIK: Nothing  
19 further.

20 MR. CONWAY: Okay. We're  
21 done.

22 MR. FOLKENFLIK: Oh. Oh. I  
23 do have one question, if we can.

24 BY MR. FOLKENFLIK:

25 Q Mr. Conway said he had a meeting

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D. Holzer - March 28, 2012

Page 125

Page 125

1 with you in prison?

2 A Yes.

3 Q And, as best you can recall, what  
4 was the nature of the discussion?

5 A Well, basically, over - all the  
6 things that we went over.

7 I explained to him what Waverly  
8 was, what it was all about, how the business  
9 operated, and just gave him a working  
10 knowledge of the business.

11 Q Did you have any discussion about  
12 the fact that your family members had been  
13 named as defendants in this lawsuit?

14 A Did that come up then? I'm not  
15 sure.

16 Q Did you, at any time, ask him to  
17 withdraw the names of your family members from  
18 the lawsuit?

19 A At that particular time?

20 Q At any time.

21 A We talked about it. Yes.

22 Q And what did you say to him and what  
23 did he say to you?

24 A I would say that I told him that  
25 they weren't involved.

D. Holzer - March 28, 2012

Page 126

Page 126

1           They shouldn't be involved. There  
2           was other people that weren't involved. Why  
3           are these people involved. You know what I'm  
4           saying?

5           Q       Did you tell him that Mr. Fingerhut  
6           wasn't involved?

7           A       He never asked me that question.

8           Q       Did you tell him that -

9                   Did he ever ask you if any of the  
10           money went to Mr. Fingerhut, as he did today?

11          A       No.

12          Q       Did he ever ask you if any of the  
13           money went to any of the Fingerhut-Holzer  
14           entities?

15          A       I don't - maybe. I just don't  
16           recall.

17          Q       Okay.

18                   But, to the extent that you had  
19           such a conversation, would you have given him  
20           any answers that were different from the  
21           answers that you gave today?

22          A       No.

23          Q       There was no attempt to give him any  
24           impression that was different than the  
25           impressions you gave today with your answers

D. Holzer - March 28, 2012

Page 127

Page 127

1 about who was involved and who wasn't involved?

2 A No.

3 Q So, as far as you can recall, to the  
4 extent that he asked about any of these subject  
5 matters, your answers at the time would be  
6 consistent with your answers today?

7 A Correct.

8 MR. FOLKENFLIK: Okay.

9 Nothing further.

10

11 (Whereupon, the Deposition  
12 of DAVID HOLZER concluded at 12:10  
13 P.M.)

14

15

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Page 128

Page 128

DEPONENT'S CERTIFICATE

STATE OF \_\_\_\_\_:

COUNTY/CITY OF \_\_\_\_\_:

Before me, this day, personally  
appeared DAVID HOLZER, who, being duly sworn,  
states that the foregoing transcript of his/her  
Deposition, taken in the matter, on the date,  
and at the time and place set out on the title  
page hereof, constitutes a true and accurate  
transcript of said deposition.

\_\_\_\_\_  
DAVID HOLZER

Signed and subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF NEW YORK



Page 129

Page 129

1 DEPOSITION ERRATA SHEET

2 Assignment No.: 350617

3 Case Caption: RAPILLO

vs.

4 FINGERHUT, ET AL.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury  
7 that I have read the entire transcript of my  
8 Deposition taken in the captioned matter or the  
9 same has been read to me, and the same is true  
10 and accurate, save and except for changes and/or  
11 corrections, if any, as indicated by me on the  
12 DEPOSITION ERRATA SHEET hereof, with the  
13 understanding that I offer these changes as if  
14 still under oath.

15 Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

16 \_\_\_\_\_

17 DAVID HOLZER

18

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Page 130

Page 130

## DEPOSITION ERRATA SHEET

1  
2 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
3 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
4 Change to: \_\_\_\_\_  
Reason for change: \_\_\_\_\_  
5 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
6 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
7 Change to: \_\_\_\_\_  
Reason for change: \_\_\_\_\_  
8 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
9 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
10 Change to: \_\_\_\_\_  
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13 Change to: \_\_\_\_\_  
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14 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
15 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
16 Change to: \_\_\_\_\_  
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24  
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VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 131

Page 131

DEPOSITION ERRATA SHEET

1  
2 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
3 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
4 Change to: \_\_\_\_\_  
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Change to: \_\_\_\_\_  
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11 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
12 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
13 Change to: \_\_\_\_\_  
Reason for change: \_\_\_\_\_  
14 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
15 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
16 Change to: \_\_\_\_\_  
Reason for change: \_\_\_\_\_  
17 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
Change to: \_\_\_\_\_  
18 Reason for change: \_\_\_\_\_  
Page No. \_\_\_\_\_ Line No. \_\_\_\_\_  
19 Change to: \_\_\_\_\_  
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24  
25

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 132

Page 132

REPORTER'S CERTIFICATE

I, CINDY SCHULTZ, a Court Reporter and  
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do hereby certify that I recorded  
stenographically the proceedings herein at the  
time and place noted in the heading hereof, and  
that the foregoing transcript is true and  
accurate to the best of my knowledge, skill and  
ability.

IN WITNESS WHEREOF, I have hereunto  
set my hand.

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CINDY SCHULTZ

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516-608-2400

[&amp; - 70s]

Page 1

|                                 |                             |                           |                       |
|---------------------------------|-----------------------------|---------------------------|-----------------------|
| <b>&amp;</b>                    | <b>122</b> 122:1            | <b>2005</b> 3:7,9 91:12   | <b>42</b> 42:1        |
| <b>&amp;</b> 2:2,7 92:25 93:1,4 | <b>123</b> 123:1            | 97:4,25 100:11            | <b>43</b> 43:1        |
| 93:6,21,23,25 96:20             | <b>124</b> 124:1            | 104:13                    | <b>43,000</b> 34:14   |
| 122:9                           | <b>125</b> 125:1            | <b>2006</b> 3:11,12 99:13 | <b>44</b> 44:1        |
| <b>0</b>                        | <b>126</b> 126:1            | 99:17 113:8               | <b>45</b> 2:3 45:1    |
| <b>06</b> 108:23 109:24         | <b>127</b> 127:1            | <b>2012</b> 1:16 5:3      | <b>46</b> 46:1        |
| <b>07</b> 115:24                | <b>128</b> 128:1            | <b>21</b> 21:1            | <b>47</b> 47:1        |
| <b>08</b> 115:15,18,23          | <b>129</b> 129:1            | <b>22</b> 22:1            | <b>48</b> 48:1        |
| <b>087-40-6783</b> 6:12         | <b>13</b> 13:1              | <b>22nd</b> 115:15,18     | <b>49</b> 49:1        |
| <b>1</b>                        | <b>130</b> 130:1            | <b>23</b> 3:12 23:1 99:17 | <b>49th</b> 21:22     |
| <b>1</b> 3:7 91:9,11,21,22      | <b>131</b> 131:1            | <b>23rd</b> 109:23 110:2  | <b>5</b>              |
| 91:24                           | <b>132</b> 132:1            | <b>24</b> 24:1 32:21      | <b>5</b> 3:3 5:1      |
| <b>10</b> 10:1 57:6             | <b>14</b> 14:1 117:10       | <b>25</b> 16:18 25:1      | <b>50</b> 50:1        |
| <b>100</b> 100:1                | <b>15</b> 3:9 15:1 97:25    | <b>26</b> 14:14,21 26:1   | <b>50th</b> 21:23     |
| <b>10006</b> 2:3                | <b>1500</b> 2:7             | <b>27</b> 16:18 27:1      | <b>51</b> 51:1        |
| <b>10036</b> 2:8                | <b>15th</b> 98:17 100:11    | <b>28</b> 5:3 28:1        | <b>52</b> 52:1        |
| <b>101</b> 101:1                | 104:13 107:17               | <b>28th</b> 1:15          | <b>53</b> 53:1        |
| <b>102</b> 102:1                | 113:8                       | <b>29</b> 29:1            | <b>54</b> 54:1        |
| <b>103</b> 103:1                | <b>16</b> 16:1              | <b>292</b> 101:15         | <b>55</b> 32:21 55:1  |
| <b>104</b> 104:1                | <b>165</b> 1:17             | <b>2921058968</b> 101:13  | <b>56</b> 56:1        |
| <b>105</b> 105:1                | <b>16th</b> 25:2            | <b>3</b>                  | <b>57</b> 57:1        |
| <b>1058968</b> 101:17           | <b>17</b> 17:1              | <b>3</b> 3:1,10 99:12     | <b>58</b> 58:1        |
| <b>106</b> 106:1                | <b>18</b> 18:1              | 108:13                    | <b>59</b> 59:1        |
| <b>107</b> 107:1                | <b>19</b> 3:7 10:7 19:1     | <b>30</b> 27:6 30:1       | <b>6</b>              |
| <b>108</b> 108:1                | 91:12                       | <b>31</b> 3:11 31:1 99:13 | <b>6</b> 6:1          |
| <b>109</b> 109:1                | <b>1970</b> 14:8            | <b>31st</b> 108:14,23     | <b>60</b> 60:1        |
| <b>10:15</b> 1:16               | <b>1974</b> 7:8 10:14       | <b>32</b> 14:14,20 32:1   | <b>600,000</b> 98:21  |
| <b>11</b> 11:1                  | <b>1975</b> 12:2            | <b>33</b> 33:1            | 100:16                |
| <b>11/14/49</b> 6:10            | <b>1976</b> 67:11           | <b>34</b> 34:1            | <b>61</b> 61:1        |
| <b>110</b> 110:1                | <b>1984</b> 17:15 19:17     | <b>35</b> 35:1            | <b>62</b> 62:1        |
| <b>111</b> 111:1                | <b>1990s</b> 69:3           | <b>350617</b> 129:2       | <b>63</b> 32:22 63:1  |
| <b>112</b> 112:1                | <b>1992</b> 25:2            | <b>36</b> 14:13,17 36:1   | <b>64</b> 64:1        |
| <b>113</b> 113:1                | <b>19th</b> 91:1 94:3       | <b>37</b> 37:1            | <b>65</b> 65:1        |
| <b>114</b> 114:1                | <b>2</b>                    | <b>38</b> 38:1            | <b>66</b> 66:1        |
| <b>115</b> 115:1                | <b>2</b> 2:1 3:9 97:22,24   | <b>39</b> 39:1            | <b>67</b> 67:1        |
| <b>116</b> 116:1                | 98:7 99:21 100:9            | <b>399</b> 46:10 55:16    | <b>68</b> 68:1        |
| <b>117</b> 117:1                | <b>20</b> 13:21 20:1 27:5,5 | <b>3rd</b> 21:21          | <b>69</b> 10:8,9 69:1 |
| <b>118</b> 118:1                | 128:18 129:15               | <b>4</b>                  | <b>6th</b> 14:8       |
| <b>119</b> 3:4 119:1            | <b>200,000</b> 114:19       | <b>4</b> 3:12 4:1 99:16   | <b>7</b>              |
| <b>12</b> 12:1 112:17           | <b>2002</b> 26:25 28:2      | 109:12,18,20,22,22        | <b>7</b> 7:1 32:21    |
| <b>120</b> 120:1                | <b>2003</b> 28:2 48:8,10    | <b>40</b> 40:1            | <b>70</b> 70:1        |
| <b>121</b> 121:1                | 48:13 49:19                 | <b>40,000</b> 12:9        | <b>70s</b> 34:13      |
|                                 | <b>2004</b> 28:7 48:10      | <b>41</b> 41:1            |                       |
|                                 | 69:19 94:9,15               |                           |                       |

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[71 - augustine]

Page 2

|                     |                      |                      |                     |
|---------------------|----------------------|----------------------|---------------------|
| 71 71:1             | absolutely 42:2      | ago 8:13,14,22       | 79:19 82:4          |
| 72 72:1             | 59:19,24             | 13:21                | appearances 2:1     |
| 73 73:1             | acceptable 80:17     | agree 9:9 51:24 52:3 | appeared 128:5      |
| 74 74:1             | acceptance 122:2     | agreed 4:2,7,12      | appears 91:25       |
| 75 75:1             | accepted 122:4       | agreement 9:20       | apple 23:17,20,21   |
| 76 76:1             | access 88:16,23 89:3 | 101:19               | 24:3                |
| 77 67:12 77:1       | accident 69:9        | ahead 35:12,13 41:2  | approach 28:19,20   |
| 78 78:1             | accomplish 15:9      | al 129:4             | 43:19               |
| 79 79:1             | account 26:13 27:3   | amended 8:4,15 9:7   | approached 28:23    |
| 8                   | 27:21 39:17 45:12    | 45:18                | approached 28:23    |
| 8 8:1 32:22         | 48:16,18 56:6,9,11   | amendment 13:10      | approximately 1:16  |
| 80 80:1             | 57:12,20,21,23,24    | 119:8                | 8:13 13:25 68:12    |
| 800,000 13:25 110:3 | 58:2,6,17 59:14      | amount 52:24 61:4    | 69:1,15 106:12      |
| 113:7               | 60:15,25 61:14       | 61:5 73:3,9,12       | arrangement 35:8    |
| 81 81:1             | 96:11,20,22,24       | 75:19 80:1,3 100:16  | arrest 89:19 90:10  |
| 82 82:1             | 98:18 102:12 110:6   | 106:4 109:11         | 103:15 116:5        |
| 83 83:1             | 122:9,11             | analyst 23:13 30:24  | arrested 104:8      |
| 84 84:1             | accountant 95:12,20  | 31:7 53:22 61:21     | 105:10 115:12       |
| 85 85:1             | accounting 95:13     | analytical 31:9      | 116:6               |
| 86 86:1             | accounts 40:13       | andrew 46:18 53:20   | aside 121:3         |
| 87 87:1             | 57:15,25 61:10       | 53:22 55:7 58:19     | asked 20:14 33:14   |
| 88 88:1             | 93:15                | 61:18                | 35:10 97:5 114:7    |
| 89 89:1             | accumulated 112:11   | angeles 55:9 61:19   | 115:9 126:7 127:4   |
| 9                   | accuracy 75:6,10     | answer 15:16 18:16   | asking 25:10 40:2,3 |
| 9 9:1               | 112:19               | 25:5,9,11 35:14      | 112:6 123:22        |
| 90 90:1             | accurate 128:9       | 51:9 59:4 70:2       | asset 11:14 18:1,2  |
| 90s 34:11,12        | 129:10 132:9         | 87:21 89:4 92:19,21  | 52:22 53:5          |
| 91 3:7 91:1         | acquired 10:14,16    | 92:23 112:10,19      | assets 18:5 27:13   |
| 92 92:1             | 60:8                 | 114:11 115:1,5,10    | 32:11 40:20,21,23   |
| 93 93:1             | actively 56:23       | answer's 80:6        | 85:25               |
| 94 94:1             | activity 116:8       | answered 20:14       | assignment 129:2    |
| 95 95:1             | actual 16:22 28:24   | 35:10 97:6 115:10    | associated 113:2,4  |
| 96 96:1             | 72:9 84:13 87:17     | answers 15:9 74:24   | assorted 113:18     |
| 97 97:1             | 93:24 118:5          | 126:20,21,25 127:5   | assume 90:8,9 93:20 |
| 98 3:9 98:1         | add 97:9             | 127:6                | assumes 42:20       |
| 99 3:10,12 99:1     | address 8:24,25 9:1  | anybody 39:12,16     | 104:1               |
| a                   | 21:24                | 88:25 89:2 121:1     | assuming 93:24      |
| a.m. 1:16           | advise 13:9          | anymore 36:1 64:15   | attached 58:6       |
| abilities 31:9      | affiliated 11:1      | 89:23                | attempt 126:23      |
| ability 132:10      | 108:10 113:5         | anyway 23:10 72:11   | attempting 107:14   |
| able 41:11          | affirmed 5:11        | apartment 72:24      | attorney 35:22,24   |
| abraham 7:15 9:24   | agencies 18:15       | 74:7 75:19 81:8      | attorneys 2:4,9 4:3 |
| 9:25 10:4,10,19     | agent 93:2,9         | 82:5,6,9,25          | augustine 71:13,17  |
|                     | ages 14:12,22        | apartments 65:21     | 72:8 75:20 76:2     |
|                     |                      | 66:1,3,10 76:10,15   | 78:2                |

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[avenue - circumstances]

Page 3

|   |  |  |   |
|---|--|--|---|
| <b>avenue</b> 21:21 46:10<br>55:17<br><b>aware</b> 29:8 69:8,11<br>69:14 90:6 123:23<br>123:25  | 125:3 132:9<br><b>better</b> 41:21<br><b>big</b> 120:14<br><b>birth</b> 6:9<br><b>birthday</b> 70:18<br><b>bit</b> 24:6 40:18 105:7<br><b>blah</b> 23:17,17,17,17<br>23:18<br><b>block</b> 118:22 119:3<br>119:7<br><b>blow</b> 53:2<br><b>blum</b> 62:7,10,12,13<br>62:16,17,19 122:25<br>123:8<br><b>blum's</b> 62:15<br><b>bob</b> 5:23<br><b>bonds</b> 70:25 71:4<br><b>bore</b> 74:8<br><b>born</b> 6:19<br><b>bottom</b> 100:20<br><b>bought</b> 27:5 34:12<br>58:6 78:11,16<br><b>bradley</b> 2:2<br><b>brean</b> 11:7,7 12:12<br>12:13,14,15,18,21<br>15:23 16:1,21 17:1<br>17:4 18:24 19:6,19<br>19:23 20:9 22:2,9<br>23:12 25:21,24 26:2<br>26:3 33:16,17,20,25<br><b>brian</b> 19:2<br><b>brief</b> 124:16<br><b>bring</b> 23:12 43:6<br><b>bringing</b> 43:4<br><b>broadway</b> 2:3,7<br><b>broken</b> 22:13<br><b>broker</b> 30:11 32:15<br><b>broker's</b> 18:13,14<br><b>brokerage</b> 11:12<br>39:23 40:6,7,9<br><b>brooke</b> 46:21 53:23<br><b>brothers</b> 10:17,19<br>10:22 11:1,5<br><b>brought</b> 42:18 | <b>buckley</b> 75:22,23,24<br>75:25 76:1,4,20<br>77:19,25<br><b>buckley's</b> 76:22<br><b>building</b> 55:21 79:7<br><b>built</b> 81:6<br><b>business</b> 11:9,11<br>17:5,25 19:12,21<br>20:4,6,11 25:18<br>26:12 29:7,10 31:12<br>31:25 32:8,10 36:10<br>46:9 49:14,15 50:4<br>50:7,8 52:4 57:17<br>57:18,18 68:22 96:5<br>107:11 118:12,14<br>119:6 125:8,10<br><b>businesses</b> 30:14,15<br>30:17<br><b>buy</b> 23:20,21 24:3,8<br>72:15,18,22 75:18<br>76:10 79:12 82:19<br><b>buying</b> 82:9,10,25<br>82:25 | 78:11 83:9<br><b>certainly</b> 7:18<br><b>certificate</b> 128:1<br>132:1<br><b>certificates</b> 36:22,23<br><b>certification</b> 4:4<br><b>certify</b> 132:5<br><b>cfo</b> 47:2 58:21,24<br>61:25 62:1,4,5,19<br>62:21<br><b>change</b> 8:24,25 20:1<br>66:25 120:21,23<br>130:2,3,4,4,5,6,7,7,8<br>130:9,10,10,11,12<br>130:13,13,14,15,16<br>130:16,17,18,19,19<br>130:20,21 131:2,3,4<br>131:4,5,6,7,7,8,9,10<br>131:10,11,12,13,13<br>131:14,15,16,16,17<br>131:18,19,19,20,21<br><b>changed</b> 9:1 15:24<br>46:4,7<br><b>changes</b> 129:10,13<br><b>changing</b> 90:7<br><b>charge</b> 12:22 24:4<br><b>charlotte</b> 117:12<br><b>charter</b> 18:8,9<br><b>charts</b> 65:11<br><b>chase</b> 45:9,14,21<br>59:18 60:16,25<br>98:19 100:19<br><b>check</b> 122:5,8,17,23<br><b>checking</b> 56:9,11<br>61:10,14<br><b>chief</b> 20:16<br><b>children</b> 14:10 17:9<br><b>children's</b> 53:17<br><b>chose</b> 32:12<br><b>chunk</b> 72:24<br><b>cindy</b> 5:4,11 132:3<br>132:16<br><b>circuit</b> 39:10<br><b>circumstances</b><br>103:14 |
| <b>b</b> 12:12,13,15<br><b>bachelor</b> 68:6<br><b>back</b> 22:15 23:23<br>47:4,8 83:22,24<br>102:16<br><b>background</b> 28:14<br><b>backwards</b> 77:8<br><b>bag</b> 37:23<br><b>bank</b> 59:14 93:15,21<br>93:22,24 96:16<br>98:19<br><b>banking</b> 11:12,13<br>58:15,16<br><b>banned</b> 39:14<br><b>barbara</b> 118:7<br><b>barry</b> 1:6 9:13 16:3<br>17:11,13 19:16<br>29:13 30:5 44:6<br>46:17 53:15 84:16<br>85:12 116:11<br>117:12<br><b>base</b> 27:1<br><b>basically</b> 24:15 26:1<br>31:6 32:2 37:24<br>125:5<br><b>basis</b> 13:17,18,19<br>55:4,13 56:19 57:3<br><b>began</b> 19:21 25:14<br>25:17 27:14<br><b>beginning</b> 8:10<br>11:24<br><b>behalf</b> 5:2<br><b>belong</b> 104:17<br><b>benefit</b> 15:20 107:23<br><b>best</b> 12:8 15:11<br>16:16 24:24 28:4<br>32:11 36:20 44:5<br>63:17 76:23 95:5 | <b>c</b><br><b>call</b> 23:25 24:14<br><b>called</b> 5:2,9 7:15<br>22:10 110:10<br><b>cancelled</b> 122:17,23<br><b>capacity</b> 9:25 12:25<br><b>capital</b> 1:9 12:22<br>27:9<br><b>caption</b> 129:3<br><b>captioned</b> 129:8<br><b>care</b> 9:10 117:11<br><b>career</b> 33:16<br><b>case</b> 97:13 129:3<br><b>cause</b> 24:5<br><b>caused</b> 69:9<br><b>cautioned</b> 5:10<br><b>ceased</b> 88:17<br><b>cent</b> 16:18 53:2 93:3<br><b>center</b> 14:9<br><b>certain</b> 30:16 33:15<br>41:12 61:7 75:19   |  |   |

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[citibank - customers]

Page 4

|   |  |   |  |
|---|--|---|--|
| <b>citibank</b> 93:13<br>100:17,18  | <b>complaint</b> 8:4,15,20<br>9:3,5,6,9 45:18  | 8:18 11:21,25 12:1<br>15:12,21 19:8 20:15   | <b>corrected</b> 20:22                                 |
| <b>city</b> 6:23 7:1,6 57:8<br>57:9 128:3   | <b>completely</b> 123:14                       | 25:7 34:23 37:3   | <b>correctional</b> 1:17                               |
| <b>clarify</b> 51:12,20   | <b>complex</b> 66:22 74:7<br>79:8 120:10,16,18 | 38:16 41:2 42:16,22<br>43:2,16 45:19 47:9   | <b>corrections</b> 129:11                              |
| <b>clear</b> 96:25 97:1   | <b>complexes</b> 72:7<br>77:22                 | 51:8,23 56:3,4<br>61:17 62:13 64:4,8  | <b>correctly</b> 59:4                                  |
| <b>clerk</b> 10:2   | <b>composite</b> 92:1                          | 65:25 71:25 72:1  | <b>corresponding</b><br>58:15                          |
| <b>client</b> 27:1  | <b>concern</b> 21:12                           | 73:21 74:13,18 75:1   | <b>costs</b> 55:16                                     |
| <b>clients</b> 43:19 62:6   | <b>concerned</b> 31:1<br>102:1                 | 75:5,9,14 77:9  | <b>counsel</b> 2:4,8 3:5                               |
| <b>closed</b> 65:7,8 86:5,7<br>87:4 88:25   | <b>concerning</b> 70:11<br>105:16              | 78:24 82:22 86:13<br>91:8,15,20 92:2  | <b>counselor</b> 36:25<br>74:20                        |
| <b>closing</b> 87:17  | <b>conclude</b> 15:6                           | 95:1,7 97:14,18,21  | <b>counter</b> 10:1 11:3<br>11:13,18 12:4,5            |
| <b>cohn</b> 95:10,12,20   | <b>concluded</b> 127:12                        | 98:2,7 99:9,19  | 25:25 110:24   |
| <b>college</b> 6:23 7:2,7,13  | <b>condominium</b> 72:7<br>77:22 78:11,17      | 100:9 101:2 102:3   | <b>county</b> 128:3                                    |
| <b>combination</b> 81:9   | <b>condominiums</b><br>72:20                   | 103:4,8,10,13,18,23<br>104:2 106:1,18   | <b>couple</b> 68:20 119:12<br>119:14                   |
| <b>come</b> 17:13 18:18<br>19:20 25:13,20<br>29:18 43:25 54:21<br>56:22 67:22 68:1<br>70:4 107:9,13 116:7<br>125:14                     | <b>confines</b> 54:3,12                        | 108:12 109:17,21<br>110:1 115:6 119:9<br>124:20,25  | <b>course</b> 21:11 33:15<br>112:12                    |
| <b>comes</b> 60:19 61:5   | <b>confirmation</b><br>122:18                  | <b>copies</b> 94:23   | <b>courses</b> 6:24,25                                 |
| <b>commence</b> 24:24   | <b>confusing</b> 74:24                         | <b>copy</b> 8:3 45:17   | <b>court</b> 1:2,19 4:16<br>5:4,11,25 69:12<br>132:3   |
| <b>commenced</b> 25:1   | <b>connection</b> 106:13                       | <b>corporate</b> 50:18<br>74:21 86:15,15  | <b>courts</b> 120:17                                   |
| <b>commencing</b> 1:16  | <b>consider</b> 31:3                           | <b>corporation</b> 36:6,10<br>36:13 37:1 90:13  | <b>covered</b> 107:5,6                                 |
| <b>commercial</b> 82:14<br>82:18  | <b>consistent</b> 127:6                        | <b>corporations</b> 45:23   | <b>coxsackie</b> 1:18                                  |
| <b>commission</b> 24:4,12<br>24:13  | <b>consisting</b> 3:7 91:12                    | <b>correct</b> 6:15,18 14:3<br>14:18 16:9 18:11   | <b>crazy</b> 62:2                                      |
| <b>commissions</b> 22:15<br>22:20   | <b>constitute</b> 86:15                        | 33:21 37:19 38:15   | <b>create</b> 78:1                                     |
| <b>committee</b> 23:16  | <b>constituted</b> 77:2                        | 42:2,9 45:25 46:20<br>46:23 48:25 49:1,7  | <b>created</b> 52:18,21<br>60:4 77:19 78:1,22<br>79:11 |
| <b>commodities</b> 30:23  | <b>constitutes</b> 128:9                       | 50:23 51:3 53:19  | <b>creating</b> 52:12<br>55:16                         |
| <b>commute</b> 57:9   | <b>consumed</b> 22:11                          | 59:16,20,22,24 60:2<br>60:3,5,6,10,11 61:1  | <b>creation</b> 28:15                                  |
| <b>companies</b> 44:24<br>64:11   | <b>contact</b> 116:15,17<br>116:19             | 61:15 62:23,25 63:2<br>76:12,19 78:5,13,14  | <b>credit</b> 24:14                                    |
| <b>company</b> 7:15 10:4<br>10:10 35:17 37:21<br>39:1,5 41:22 45:12<br>53:21,24 54:12<br>56:23 58:13 64:13<br>66:23 110:17,24<br>111:11 | <b>continue</b> 12:11<br>21:25                 | 78:18 79:9,22 80:13<br>83:2 85:8,13,17<br>86:1,12 90:3 98:20<br>101:18 102:13<br>109:2 114:14,17,20<br>114:21,22,25 115:3<br>122:7,11 127:7 | <b>creditor</b> 111:11                                 |
| <b>compensation</b> 54:2  | <b>contributions</b> 41:6,9<br>66:16           |   | <b>crime</b> 102:18,20,23<br>107:2                     |
|   | <b>control</b> 105:2,4                         |   | <b>crimes</b> 105:16                                   |
|   | <b>conversation</b> 70:10<br>126:19            |   | <b>criminal</b> 103:15<br>116:8                        |
|   | <b>conversations</b> 70:5<br>70:21             |   | <b>curiosity</b> 34:15                                 |
|   | <b>convicted</b> 102:18,25                     |   | <b>current</b> 9:8                                     |
|   | <b>conway</b> 2:2,4 3:3<br>5:16,23 6:1,6 7:18  |   | <b>customers</b> 43:1,4,7<br>43:10,25 49:6             |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400



[cut - escape]

Page 5

|                             |                             |                             |                             |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| <b>cut</b> 39:21 59:3 80:4  | <b>degree</b> 7:1           | <b>discuss</b> 35:5         | <b>e</b>                    |
| <b>cynthia</b> 1:18         | <b>delaware</b> 35:20       | <b>discussed</b> 82:2 89:5  | <b>e</b> 3:1 4:1,1 12:12    |
| <b>d</b>                    | <b>delivered</b> 59:10      | <b>discussing</b> 31:12     | <b>early</b> 34:12,13 67:14 |
| <b>d</b> 3:1 4:1 26:19      | <b>deponent</b> 8:2         | <b>discussion</b> 6:3 7:20  | <b>earn</b> 47:21,23 48:2   |
| <b>dahlman</b> 26:16,16     | <b>deponent's</b> 128:1     | 32:1 34:20 99:6             | 48:24 49:2,3                |
| 26:21,24 27:10,14           | <b>deposited</b> 60:14      | 116:25 120:6 125:4          | <b>earning</b> 53:13        |
| 27:21 40:10,11              | <b>deposition</b> 5:1       | 125:11                      | <b>earnings</b> 12:7 13:24  |
| <b>daily</b> 55:3,13        | 127:11 128:7,10             | <b>discussions</b> 31:24    | 53:18                       |
| <b>date</b> 6:9 16:22 26:10 | 129:1,8,12 130:1            | 71:22 72:3 119:22           | <b>easy</b> 28:5 50:1 84:8  |
| 27:24 28:3,6 34:10          | 131:1                       | <b>distance</b> 55:11       | 99:23                       |
| 69:6 128:7 130:23           | <b>describe</b> 44:4 81:5   | <b>district</b> 1:2,2       | <b>education</b> 110:16     |
| 131:23                      | 81:20 103:5,9,14            | <b>divide</b> 52:23         | <b>effect</b> 4:15 111:13   |
| <b>dated</b> 3:7,9,10,12    | <b>description</b> 3:6      | <b>division</b> 37:7,20     | <b>eight</b> 12:19 32:18    |
| 91:12 97:25 99:13           | <b>designing</b> 43:10,11   | <b>document</b> 3:7,9,10    | <b>eighth</b> 24:10,11      |
| 99:17 100:10                | <b>desire</b> 90:20         | 3:12 91:5,7,11,16           | <b>either</b> 122:23        |
| 109:22                      | <b>desk</b> 23:14 24:1      | 92:5,8 97:24 98:10          | <b>element</b> 73:19        |
| <b>daughter</b> 46:22       | <b>destination</b> 96:17    | 98:11,16 99:12,16           | <b>emerged</b> 28:13        |
| <b>david</b> 1:14 2:9 3:3   | 114:2                       | 99:21 100:3,13,24           | <b>employed</b> 17:2        |
| 5:1,8,20 9:14 46:17         | <b>determinations</b> 38:6  | 101:25 108:13,22            | <b>employee</b> 54:1        |
| 53:15 54:5,6 98:18          | <b>develop</b> 24:20 68:14  | 109:14,16,18                | 58:25                       |
| 100:16 127:12               | 76:6                        | <b>documents</b> 86:14      | <b>employees</b> 46:11      |
| 128:5,13 129:17             | <b>developer</b> 76:3       | 121:21 122:13,17            | 53:10,12 57:13              |
| 130:23 131:23               | 77:19 79:6                  | 122:25 123:7                | <b>ended</b> 43:14 80:14    |
| <b>day</b> 1:15 24:1 55:1,2 | <b>developing</b> 79:12     | <b>doing</b> 15:15 17:16    | <b>engage</b> 36:2          |
| 57:10 59:1 115:13           | <b>development</b> 75:21    | 54:14 61:19 71:7            | <b>enterprises</b> 68:23    |
| 115:16 128:4,18             | 76:23 77:12,21              | <b>dollar</b> 91:2 92:14    | <b>entire</b> 129:7         |
| 129:15                      | 78:20                       | <b>dollars</b> 23:5,7 34:13 | <b>entirely</b> 50:21       |
| <b>deal</b> 19:14 41:12,13  | <b>died</b> 26:3,7          | 53:1,3,6,7 69:16            | <b>entities</b> 121:5,10    |
| 58:12                       | <b>difference</b> 84:3      | 72:16,16 73:6,9             | 126:14                      |
| <b>dealings</b> 109:7       | <b>different</b> 18:6 32:19 | 82:24 96:8 109:5            | <b>entitled</b> 1:15        |
| <b>debt</b> 111:10          | 38:14 63:3,22 65:11         | <b>domiciled</b> 45:13      | <b>entity</b> 50:19 58:8,10 |
| <b>december</b> 3:9 97:25   | 66:4,23,24 71:18            | 87:11                       | 58:12 85:12 108:9           |
| 98:17 100:10                | 72:7 78:17 80:11            | <b>door</b> 89:24 90:7      | 122:2                       |
| 104:13 107:17               | 113:17 117:2                | <b>double</b> 73:12,12      | <b>equal</b> 37:7,11,17     |
| 115:23                      | 126:20,24                   | <b>doubt</b> 36:8,11,12,14  | 43:6                        |
| <b>deciding</b> 28:17       | <b>dims</b> 40:17           | 87:12                       | <b>equities</b> 1:7 9:15    |
| <b>declaration</b> 129:5    | <b>dinner</b> 31:18 68:19   | <b>douglas</b> 1:6 14:13    | 31:1 38:6 64:11             |
| <b>declare</b> 129:6        | 68:19 119:23,25             | 14:20 46:24 54:7,9          | 88:1                        |
| <b>decorator</b> 67:20      | 120:1,4,7,9,23              | 54:14                       | <b>equity</b> 16:7,10,12    |
| <b>defendant</b> 1:13 2:9   | 121:6                       | <b>draw</b> 120:14          | 18:6 30:16                  |
| 5:2                         | <b>direct</b> 82:7          | <b>drive</b> 57:6 70:15     | <b>errata</b> 129:1,12      |
| <b>defendants</b> 1:11      | <b>directed</b> 45:21       | <b>dueling</b> 15:7         | 130:1 131:1                 |
| 64:9 125:13                 | 102:11                      | <b>duly</b> 5:10 128:5      | <b>escape</b> 37:14         |
|                             | <b>directly</b> 7:9 60:14   | <b>dying</b> 26:10          |                             |
|                             | 96:10 107:4                 |                             |                             |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[escrow - folkenflik]

Page 6

|  |   |  |   |
|--|---|--|---|
| <b>escrow</b> 93:1,8,23,25<br>96:11 122:11,12<br><b>esq</b> 2:4,8<br><b>establish</b> 61:2<br><b>established</b> 59:15<br>60:20<br><b>estate</b> 30:22 44:18<br>64:23 65:18,19<br>66:22 71:8,10 72:12<br>75:20 76:1,23 77:12<br>77:21 79:6,6<br><b>estimate</b> 12:8 16:16<br>28:4<br><b>et</b> 129:4<br><b>everybody's</b> 99:22<br><b>evidence</b> 42:21<br>104:1<br><b>evolution</b> 29:2<br><b>evolved</b> 28:22,23<br><b>exact</b> 21:23 26:10<br>28:3 48:9 69:6<br>72:17 81:13 106:4,8<br>114:1<br><b>exactly</b> 27:22 29:3<br>38:19 43:12 52:17<br>53:20 69:18 71:5<br>72:23 96:18<br><b>examination</b> 1:13<br>4:13 5:15 119:16<br><b>examined</b> 5:14 91:6<br>92:4 98:9 100:12,23<br>108:21 109:13<br><b>example</b> 89:1<br><b>excess</b> 13:5 27:17<br>63:6,8,10,11,15<br><b>exchange</b> 11:14<br>32:24 33:1,13<br><b>excluding</b> 50:10<br><b>excuse</b> 19:5 51:19<br>54:7<br><b>execute</b> 40:1<br><b>executive</b> 20:16<br><b>exhibit</b> 3:6 91:11,21<br>91:22,24 92:1 97:24<br>98:6,7 99:4,12,16 | 100:7,9 109:19,21<br>109:22<br><b>exhibits</b> 3:5<br><b>existed</b> 86:17<br><b>expand</b> 65:16<br><b>expensive</b> 46:5<br><b>explain</b> 13:19 22:22<br>39:6 43:15 106:11<br>106:22<br><b>explained</b> 125:7<br><b>extent</b> 51:6 121:15<br>126:18 127:4<br><b>extracted</b> 69:15,17<br><b>extrapolate</b> 105:6<br><br><b>f</b><br><br><b>f</b> 4:1<br><b>facetious</b> 25:5,8<br><b>facility</b> 1:17<br><b>fact</b> 125:12<br><b>facts</b> 42:20 104:1<br><b>failed</b> 49:13,15<br>123:20<br><b>failing</b> 123:24<br><b>falter</b> 26:4<br><b>familiar</b> 62:9 64:13<br>64:17 67:6 91:3,4<br>110:10<br><b>family</b> 67:18 81:10<br>82:12,21 125:12,17<br><b>family's</b> 8:17<br><b>far</b> 31:1 55:14 93:11<br>123:11,13 124:1,5<br>127:3<br><b>faster</b> 14:15<br><b>father</b> 62:16<br><b>fee</b> 83:10,19,25<br>85:17,19,23 86:9<br><b>fees</b> 84:3<br><b>field</b> 7:4 32:11<br><b>fifth</b> 13:2,7,9 106:25<br>107:7 119:8<br><b>file</b> 49:19 94:14<br><b>filing</b> 4:4 | <b>filled</b> 61:23<br><b>finally</b> 7:8<br><b>finance</b> 6:25 7:10<br><b>financial</b> 22:6,8<br>27:7 30:12 32:14<br>36:18 104:6<br><b>financier</b> 30:10<br><b>find</b> 28:5 33:8 42:23<br>50:1 78:25 115:7<br><b>fine</b> 21:9,13 44:15<br>101:5 108:20<br><b>fingerhut</b> 1:6,7,7,8<br>1:8,9,10 9:14,14,15<br>9:16,17,18,19 17:11<br>17:14,16,22 18:19<br>18:20 19:10,16,22<br>20:4 22:1 24:17,20<br>25:18 27:24 28:8,10<br>28:12,20,20 29:4<br>30:13,19 31:11,24<br>32:4,9 33:5,10,11<br>35:3,16 36:9,21<br>37:4,5,17,22 40:19<br>40:23,24 41:17 42:4<br>42:17 43:3,9,18<br>44:10,11 46:12,17<br>46:18,21 47:10,11<br>47:16,18,19,25<br>48:23 49:13 50:2,5<br>50:16 51:2,24 52:1<br>52:19 53:13,15,21<br>53:22,23 54:15 55:4<br>55:7 56:2,5,12,18<br>57:22 58:18 61:18<br>63:4,19 64:11,18,19<br>64:19 65:18 68:23<br>69:22 70:7 75:16<br>76:9,17 77:2,3<br>78:10,16 79:10,15<br>79:16 83:4,13,23,24<br>84:12 85:3,5,6 86:8<br>86:16,22 87:4,15,23<br>88:1,5,8,12,17,24<br>89:6,20,23 90:2,13<br>90:17 93:14 94:5 | 96:10 102:19,22<br>103:16,24 104:7,10<br>104:25 105:9,17,24<br>106:14 107:10,14<br>108:5 111:1,3,4,8<br>113:9,15 114:8<br>115:8,21 116:11<br>117:25 118:4<br>119:18 121:5,10<br>124:10 126:5,10,13<br>129:4<br><b>fingerhut's</b> 20:11<br>46:19 48:20 88:16<br>88:23<br><b>finish</b> 80:24<br><b>finished</b> 26:1<br><b>firm</b> 9:24,25 10:15<br>10:19 11:12,15<br>18:22 22:16 23:2,11<br>26:3,15 29:17 30:4<br>30:9 36:5 39:23<br>40:7,9 46:7 54:20<br>55:10,23 56:8 57:2<br>86:22,23,24 93:4,22<br>95:13<br><b>firms</b> 26:14<br><b>first</b> 5:10 17:14<br>18:19,20 32:5 34:11<br>56:7,20,24 60:19,23<br>62:15 67:1,10 70:10<br>101:15<br><b>fit</b> 65:1<br><b>five</b> 11:6,22 63:20<br>63:22 66:20 69:16<br>73:6 81:22,24 91:1<br>94:3<br><b>florida</b> 44:19 72:21<br>81:6 96:17<br><b>fluctuated</b> 112:12<br><b>foley</b> 92:25 93:1,4,6<br>93:21,23,25 96:20<br>122:9<br><b>folkenflik</b> 2:7,8 3:4<br>7:23 8:2,6,9 11:19<br>11:23 13:8,16,20 |
|--|---|--|---|

VERITEXT REPORTING COMPANY

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Page 7

|   |  |   |   |
|---|--|---|---|
| 15:3,19 18:23 19:5<br>20:13,21,25 23:4,9<br>25:4 35:9,13 36:24<br>38:11 39:21 40:25<br>41:3,15,20,24 42:3<br>42:10,19,24 43:13<br>45:15 47:3 50:10<br>51:5,19 56:1 59:2<br>59:17,21,25 60:4,7<br>60:12,21,24 61:12<br>61:16,24 62:11 64:2<br>64:7 65:23 66:2<br>71:23 72:4 73:23<br>74:5,10,16,20 75:3<br>75:7 77:6,11,15,18<br>78:3,9,15,19 81:15<br>81:19 82:14 84:7,10<br>84:15,17,21,23 85:1<br>85:6,9,14,18,23<br>86:2,6 90:4 91:17<br>91:23 92:3,18,22<br>94:21,24 95:6 96:12<br>96:19,23 97:5,8,16<br>98:5,8 99:3,24<br>100:4,25 101:23<br>103:2,6,12,17,21,25<br>105:12,15,19,23,25<br>106:10,20 108:8,19<br>109:15,19 114:3,9<br>114:12,15,18,21,23<br>115:1,9 119:11,14<br>119:17 124:12,18<br>124:22,24 127:8<br><b>follow</b> 10:18<br><b>follows</b> 5:14<br><b>food</b> 120:17<br><b>footing</b> 55:15<br><b>force</b> 4:14<br><b>foregoing</b> 128:6<br>132:8<br><b>forget</b> 95:10<br><b>form</b> 4:8<br><b>formal</b> 18:21<br><b>former</b> 96:1 | <b>forth</b> 73:16<br><b>forty</b> 21:23<br><b>forward</b> 115:2,4<br><b>foster</b> 11:7 22:9<br>33:17<br><b>foundation</b> 92:19<br><b>four</b> 63:20,22 66:20<br>69:6,21 112:16<br><b>friday</b> 9:2<br><b>friend's</b> 26:14<br><b>friends</b> 117:18,19<br>118:11<br><b>friendship</b> 68:3,14<br><b>front</b> 100:10<br><b>fruition</b> 49:10<br><b>full</b> 10:9<br><b>function</b> 21:1 38:18<br><b>fund</b> 1:8 28:18<br>64:19 88:5<br><b>funded</b> 41:14 42:14<br>59:8 61:6<br><b>funding</b> 59:10 65:10<br>65:11<br><b>funds</b> 27:10 41:16<br>41:18 60:13 64:25<br>70:11 93:12 109:1<br>110:5,8<br><b>further</b> 4:7,12<br>119:10 124:19<br>127:9<br><b>future</b> 35:6 108:9 | <b>geocapital</b> 9:17<br>17:19,25 20:11 21:2<br>21:6,7,12,16 22:11<br>22:17 23:11,16 24:9<br>29:5,19<br><b>gestured</b> 45:17<br><b>getting</b> 28:16 64:5,6<br>70:24 71:3 97:14<br><b>give</b> 89:1 99:24<br>124:12 126:23<br><b>given</b> 108:4 113:8<br>126:19<br><b>giving</b> 15:1<br><b>go</b> 6:21 11:4 21:4<br>23:11 26:15 35:12<br>35:13 36:2 41:2<br>60:22 65:22 113:14<br>113:16<br><b>going</b> 10:12 49:2<br>58:22 72:6 83:18<br>115:2,4<br><b>gonna</b> 20:1 21:7,12<br>23:20,21,22 35:12<br>87:20 93:19 102:9<br>120:14,16,23<br><b>good</b> 5:21 9:23 15:2<br>15:18 30:25 71:3<br>79:1 87:9<br><b>gotta</b> 74:16,21<br><b>government</b> 94:19<br><b>graduate</b> 7:6<br><b>graduating</b> 54:19<br><b>graduation</b> 7:13<br><b>green</b> 11:9 12:11,16<br><b>greene</b> 1:17<br><b>grew</b> 53:5 68:2<br><b>groceries</b> 113:25<br><b>guess</b> 116:9<br><b>guilty</b> 105:13,21<br><b>guy</b> 23:14 30:21,22<br>30:23 44:6 62:1,14<br><b>guy's</b> 117:10 | <b>h</b><br><b>h</b> 26:19 95:10<br><b>hand</b> 132:12<br><b>handed</b> 8:3<br><b>handled</b> 121:16<br>122:25 123:11<br><b>handling</b> 123:9<br><b>hands</b> 38:10<br><b>handwriting</b> 101:1<br><b>happen</b> 103:1<br><b>happened</b> 21:8<br>107:16,18 110:8<br><b>happens</b> 23:10<br>24:15<br><b>hard</b> 25:11<br><b>harrah</b> 19:3<br><b>hazard</b> 116:9<br><b>he'll</b> 43:14<br><b>head</b> 11:17 12:2,3,5<br>19:4 83:12<br><b>heading</b> 132:7<br><b>headquarters</b><br>111:14<br><b>hear</b> 103:7<br><b>hedge</b> 28:17 64:25<br><b>heidi</b> 1:3 2:5 5:24<br>67:7,9 68:9 98:17<br>100:15 104:20<br><b>heidi's</b> 101:5<br><b>height</b> 112:2,3<br><b>held</b> 1:14,17 6:4<br>7:21 31:15,17 33:3<br>33:6,14,19 34:21<br>44:23 50:21 66:22<br>93:14,25 99:7<br><b>help</b> 30:5<br><b>helpful</b> 97:17<br><b>hereinbefore</b> 5:9<br><b>hereof</b> 128:9 129:12<br>132:7<br><b>hereto</b> 4:4<br><b>hereunto</b> 132:11<br><b>hey</b> 28:24 |
|---|--|---|---|

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[high - investments]

Page 8

|  |  |  |   |
|--|--|--|---|
| <b>high</b> 6:22 10:8<br>112:14,21<br><b>higher</b> 97:12<br><b>highest</b> 12:20,24<br>13:24 16:17 112:25<br><b>hire</b> 18:14 117:6<br><b>hired</b> 67:20 116:11<br><b>history</b> 7:5<br><b>hold</b> 16:11 93:22<br>100:4,5<br><b>holder</b> 16:7,13<br><b>holding</b> 41:22<br><b>holdings</b> 53:18<br><b>holds</b> 93:23<br><b>holiday</b> 70:17<br><b>holzer</b> 1:6,7,7,8,8,9<br>1:10,14 2:9 3:3 5:1<br>5:8,20,21 6:7,13<br>9:14,14,15,16,17,18<br>9:19 14:5,7,13,14<br>14:14,20,20 27:24<br>28:8,10,12 32:4,9<br>33:5,10,11 34:25<br>35:1,16 36:9,21<br>37:5 40:19,23,24<br>41:17 42:4 44:10,11<br>46:12,17,24 47:10<br>47:11,16,19,25<br>48:23 50:2,5,16<br>52:1,19 53:13,15<br>54:5,7,9,14,15<br>55:24 56:12 57:22<br>58:18 63:4,19 64:11<br>64:18,19,19 68:23<br>69:22 70:7 75:16<br>76:9,17 77:2,3<br>78:10,16 79:10 83:4<br>83:13,24 84:12 85:3<br>85:5,7 86:8,16,22<br>87:4,15,23 88:1,5,8<br>88:12,17,24 89:20<br>89:23 90:2,9,13,17<br>93:14 94:5 96:10<br>98:19 100:16<br>105:12 111:1,3 | 117:25 118:4<br>119:19 121:5,10<br>124:10 126:13<br>127:12 128:5,13<br>129:17 130:23<br>131:23<br><b>home</b> 17:2<br><b>homes</b> 81:10 82:12<br>82:21<br><b>house</b> 36:18 70:12<br>70:15<br><b>houses</b> 81:8<br><b>howard</b> 62:16<br><b>human</b> 58:11<br><b>hundred</b> 13:5 24:3,8<br>24:10 53:3 63:8,11<br>91:2 92:14 93:3<br>96:8 98:22,24,25<br>99:2 109:5<br><br><b>i</b><br><b>idea</b> 21:15 22:18<br>23:20 44:6,7 48:22<br>60:2 68:13 87:22,25<br>88:4,7,11 123:20,21<br><b>ideas</b> 44:9,17,18<br>54:22<br><b>identification</b> 91:14<br>91:19,25 98:1 99:14<br>99:18<br><b>identified</b> 62:6<br>64:10 91:21 117:7<br><b>identify</b> 91:5,16<br>100:7 109:16<br><b>ii</b> 1:10 9:19 65:13<br>77:4 78:16 79:16,21<br>80:13,19,23,25<br>83:14 84:22 88:12<br>121:9,11,12,20<br>122:15<br><b>iii</b> 65:13<br><b>implying</b> 80:15<br><b>imposed</b> 88:23<br><b>impression</b> 126:24 | <b>impressions</b> 126:25<br><b>improper</b> 123:24<br><b>impugned</b> 120:25<br><b>incarcerated</b> 87:6,7<br><b>include</b> 32:20<br><b>included</b> 82:11<br><b>including</b> 46:13<br>64:11<br><b>income</b> 47:15,17<br>48:12,21 94:8,11<br>97:3<br><b>incorporated</b> 9:16<br>11:10 12:11 21:16<br>64:12,18 87:23 88:2<br><b>incorporation</b> 41:10<br><b>incriminating</b> 13:14<br><b>incrimination</b> 13:12<br><b>indicate</b> 90:19 98:16<br>108:25 110:2<br><b>indicated</b> 65:15,17<br>112:24 129:11<br><b>indicating</b> 8:16 9:4<br>9:11 96:14,16<br>100:21 122:14<br><b>indirectly</b> 42:5<br><b>individual</b> 58:8<br>80:16 82:20<br><b>individuals</b> 79:18<br><b>industry</b> 32:14<br>39:14<br><b>infamy</b> 115:17<br><b>information</b> 22:20<br><b>infrastructure</b> 76:7<br><b>infringement</b> 88:15<br><b>initial</b> 46:7 65:10<br>73:5 90:22<br><b>initiated</b> 50:3 70:23<br>75:21<br><b>injury</b> 69:9,12<br><b>inner</b> 21:6<br><b>instance</b> 117:23<br>118:1<br><b>instigated</b> 116:10<br><b>institute</b> 6:25 7:10 | <b>institutional</b> 23:12<br><b>intended</b> 35:7 52:13<br><b>intending</b> 73:17<br><b>intent</b> 109:8<br><b>intention</b> 48:24 52:9<br><b>interchangeable</b><br>16:5<br><b>interest</b> 15:13 65:18<br>66:5 74:1 76:22<br>83:15 111:2,4,7<br><b>interested</b> 79:19<br><b>interesting</b> 97:11<br><b>interests</b> 29:8,11,22<br>50:5,7,8 59:9 60:8<br>60:13<br><b>interior</b> 67:19<br><b>interrupt</b> 41:1<br><b>introduced</b> 67:24<br><b>invest</b> 43:20 54:22<br>73:2 80:11 118:17<br>118:19,23 121:5,10<br>121:20<br><b>invested</b> 42:24<br>72:20 119:19<br>121:15<br><b>investigation</b> 116:20<br><b>investigator</b> 116:11<br>116:15 117:5<br><b>investment</b> 11:12<br>22:19 38:7 42:15<br>45:8 49:4,5,9,14,16<br>53:4 58:12 59:5,6<br>59:13 60:2,5 61:13<br>63:18 66:12,18,21<br>68:22 70:6,11 71:8<br>71:10 72:7,25 73:5<br>75:18 76:10 80:14<br>82:7,11 83:1,23<br>90:17,20,23 91:2<br>92:17 117:21<br>119:25 121:10<br>122:1 124:2,6<br><b>investments</b> 23:16<br>43:10,11 44:19<br>45:11,24 50:12 |
|--|--|--|---|

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[investments - lot]

Page 9

|   |   |   |  |
|---|---|---|--|
| 52:19 63:23 65:12<br>71:16 77:3 121:14<br><b>investor</b> 45:5 66:11<br>76:2 79:6 121:19<br><b>investors</b> 42:18<br>44:16 60:9 65:20<br>66:16 76:17 86:10<br>118:15 121:15<br><b>invite</b> 65:4 66:16<br><b>invited</b> 68:18,19<br><b>invoke</b> 106:25 119:8<br><b>involved</b> 19:12,15<br>24:16 29:17 37:10<br>52:4 56:23 81:2<br>83:10 125:25 126:1<br>126:2,3,6 127:1,1<br><b>involvement</b> 17:1<br>19:9 67:14 103:16<br>122:18,22<br><b>involving</b> 102:7,19<br>102:21<br><b>irrelevant</b> 97:9<br><b>irwin</b> 17:21<br><b>issue</b> 104:6<br><b>issued</b> 36:21<br><b>item</b> 117:24<br><b>items</b> 113:18<br><b>iv</b> 65:13 | <b>jewish</b> 14:9<br><b>job</b> 63:1<br><b>joe</b> 53:2 75:22,23<br><b>john</b> 1:3 2:5 5:24<br>67:6,9,11 96:3<br>104:20<br><b>join</b> 17:9<br><b>joshua</b> 14:14,20<br><b>june</b> 25:2<br><b>junior</b> 10:8   | <b>l</b><br><b>l</b> 4:1,1 26:19<br><b>l.p.</b> 1:8 9:17 64:19<br>88:5<br><b>land</b> 76:5<br><b>lardner</b> 92:25 93:1,4<br>93:6,23 94:1 96:20<br><b>lardner's</b> 93:21<br>122:9<br><b>large</b> 16:10,14 22:16<br><b>largest</b> 16:12<br><b>late</b> 34:11 120:20<br><b>law</b> 36:5 93:4,22<br><b>lawful</b> 124:2,6<br><b>lawsuit</b> 125:13,18<br><b>lawyer</b> 46:2<br><b>lawyers</b> 46:4<br><b>learn</b> 116:7<br><b>leave</b> 26:2,11 34:1<br><b>leaving</b> 11:5 25:24<br>121:3<br><b>left</b> 25:21 26:1,7<br>33:25<br><b>legal</b> 51:7<br><b>lehman</b> 10:17,19,22<br>11:1,5<br><b>lengthy</b> 106:17<br><b>leslie</b> 14:5 98:18<br>100:16<br><b>liability</b> 37:1 45:23<br>58:13<br><b>license</b> 39:15<br><b>licensed</b> 32:14 39:3<br><b>licenses</b> 18:13 32:13<br>32:19 33:11,15<br><b>lieber</b> 17:21,23<br><b>lied</b> 102:15<br><b>life</b> 39:14 99:22<br><b>limit</b> 79:23 80:5,6<br><b>limited</b> 36:25 45:23<br>58:12<br><b>lincoln</b> 14:9<br><b>line</b> 130:2,3,5,6,8,9<br>130:11,12,14,15,17 | 130:18,20 131:2,3,5<br>131:6,8,9,11,12,14<br>131:15,17,18,20<br><b>liquidated</b> 53:9<br><b>list</b> 11:3 64:3<br><b>listed</b> 8:8 54:1<br><b>little</b> 24:6 40:18<br>67:15 105:6<br><b>live</b> 120:16<br><b>lived</b> 55:9<br><b>lives</b> 115:16<br><b>living</b> 47:21,23 48:2<br>57:5 58:9<br><b>llc</b> 1:7,9,10 9:15,18<br>9:19 28:11 35:17,25<br>36:9 40:22 41:5,12<br>42:15,25 45:11,13<br>51:13,15,21 52:23<br>56:12 58:2,4,7,16<br>59:7,13,15 60:5,9<br>60:15,22,25 61:6,8<br>64:20 65:4,16 66:5<br>66:6,8,12,15,19,24<br>72:20 73:10 74:7,11<br>74:12 75:16 77:4<br>78:7,10,23 83:8<br>84:12,18,20,21 85:2<br>86:4,6,9 88:8,12<br>90:4,5 119:19<br>122:15<br><b>lles</b> 41:22 42:5 45:7<br>45:9 52:12,18 63:3<br>63:18 65:11 79:11<br><b>llp</b> 96:21<br><b>long</b> 10:21 12:17<br>27:20 38:3 39:8<br>95:19,21 106:20<br><b>look</b> 93:19 98:3<br>99:20 100:3,6 108:7<br>108:13 109:12<br><b>looked</b> 81:20<br><b>looking</b> 100:1<br><b>los</b> 55:9 61:19<br><b>lot</b> 15:24 120:15 |
| <b>j</b><br><b>j</b> 2:4 95:10<br><b>j.h.</b> 95:12,19<br><b>j.p.</b> 45:9,13,21 59:17<br>60:16,25 93:17<br>98:19 100:18<br><b>jacket</b> 86:15<br><b>jail</b> 89:8,10,16<br>104:16<br><b>january</b> 3:11 99:13<br>108:14,23 115:23<br><b>jennifer</b> 14:13<br><b>jennifer's</b> 14:17<br><b>jerome</b> 16:3<br><b>jersey</b> 95:16,18 96:6   | <b>k</b><br><b>keep</b> 7:24 58:22<br>64:16<br><b>kept</b> 86:21,23 87:1<br><b>key</b> 55:18<br><b>kind</b> 28:22 40:17<br><b>knew</b> 69:17<br><b>know</b> 13:2 15:22<br>16:15 17:11,13,22<br>18:8,16 20:25 21:6<br>21:12,20 22:14 25:3<br>25:9,11 27:15 28:6<br>29:2,11 31:5 35:19<br>43:17 49:25 53:25<br>55:14,23 63:5,13,14<br>64:16 69:18 70:19<br>76:7,24 82:19 83:16<br>87:10,11,14,19,20<br>89:4,25 90:11,12<br>92:10 93:11 94:13<br>94:17,20 95:5<br>100:22 101:3,6,6<br>105:11 115:14<br>116:12 117:12<br>118:7 120:12,19<br>123:1,11,13,17,18<br>123:21 124:1,5<br>126:3<br><b>knowledge</b> 22:16<br>24:25 30:25 36:20<br>96:9 102:4 125:10<br>132:9 |   |  |

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400



[lotito - new]

Page 10

|                            |                            |                           |                            |
|----------------------------|----------------------------|---------------------------|----------------------------|
| <b>lotito</b> 96:3,4       | 128:7 129:8                | <b>mister</b> 62:11       | 19:23 20:9 22:2,9          |
| <b>lunch</b> 31:18         | <b>matters</b> 127:5       | <b>misunderstood</b> 40:4 | 23:12 25:21,24 26:2        |
| <b>lynch</b> 120:17        | <b>max</b> 2:8 73:21,21    | <b>mixed</b> 37:23        | 33:16,17,20,25             |
| <b>m</b>                   | 74:13                      | <b>model</b> 52:5         | <b>n</b>                   |
| <b>m</b> 26:19             | <b>mcgerity</b> 2:7        | <b>moment</b> 37:15       | <b>n</b> 3:1 4:1 12:12     |
| <b>magazine</b> 64:24      | <b>mean</b> 18:3,5 38:23   | <b>money</b> 3:7,9,10,12  | 26:19                      |
| <b>mahwah</b> 96:6         | 41:4 43:12 44:21           | 18:10,12 32:2 35:15       | <b>name</b> 5:18,23 8:17   |
| <b>mail</b> 8:12           | 45:12 47:14 50:1           | 39:12 44:23 45:5,20       | 29:12,14 30:3 36:1         |
| <b>main</b> 95:15          | 64:14,21 72:23 74:6        | 47:11,12 48:4,24          | 38:21 46:25 47:1,2         |
| <b>major</b> 7:5           | 88:19 94:24 97:10          | 49:3,11,17 52:7,24        | 50:22,23 55:23             |
| <b>making</b> 38:6 52:13   | 105:5 111:12               | 53:9,14 54:22 60:18       | 56:12 58:20,20             |
| 83:3 90:17                 | 117:23                     | 60:22 64:24 65:22         | 60:15 62:2,3,15            |
| <b>man</b> 62:17           | <b>meaning</b> 18:23 27:4  | 66:24 67:2 70:24,25       | 72:9 74:8 76:8             |
| <b>manage</b> 18:10 32:10  | <b>means</b> 101:7         | 71:3,9 72:12 73:12        | 89:24 90:6 96:19           |
| <b>managed</b> 22:12       | <b>meet</b> 18:18 19:14    | 73:13,15 80:2,4           | 116:12 117:4,11            |
| <b>management</b> 11:14    | 67:9,22 115:25             | 83:3 91:11 93:25          | 118:5                      |
| 18:1,3 85:2 93:7           | <b>meeting</b> 116:21      | 97:24 99:12,16            | <b>named</b> 5:10 75:22    |
| <b>manager</b> 31:8 37:25  | 124:25                     | 104:11,17,24              | 125:13                     |
| 85:7                       | <b>meetings</b> 31:11,14   | 105:22 106:14             | <b>names</b> 14:12 37:14   |
| <b>managers</b> 24:2       | 31:15                      | 107:14,16,18,22,25        | 63:25 125:17               |
| <b>managing</b> 18:12      | <b>mel</b> 118:22 119:3,7  | 108:3,4 109:9             | <b>nature</b> 20:10 31:23  |
| 84:11,14,25 85:10          | <b>member</b> 32:23        | 113:11 114:5,13,24        | 32:1 67:13 70:20           |
| 85:11,13,15 86:7           | 33:12 84:11,14             | 117:1 126:10,13           | 71:21 72:2 102:20          |
| <b>manhattan</b> 6:20      | 85:15 86:8                 | <b>money's</b> 61:6       | 102:23 104:5 105:8         |
| <b>manner</b> 123:12       | <b>members</b> 86:10       | <b>monies</b> 107:19      | 105:20 106:8 109:8         |
| <b>manual</b> 62:22        | 122:14 125:12,17           | 114:2                     | 116:24 125:4               |
| <b>march</b> 1:15 3:12 5:3 | <b>membership</b> 59:9     | <b>month</b> 10:13        | <b>near</b> 120:17         |
| 99:17 109:22,23            | 60:8,13                    | <b>month's</b> 56:7       | <b>necessarily</b> 13:21   |
| 110:2 113:8                | <b>memberships</b> 37:2    | <b>months</b> 8:13,14,22  | 23:7 44:3                  |
| <b>mark</b> 99:9           | <b>memory</b> 40:18        | 10:7                      | <b>necessary</b> 106:21    |
| <b>marked</b> 91:9,13,19   | <b>merchandise</b> 58:5    | <b>morgan</b> 45:9,14,21  | <b>need</b> 13:17          |
| 91:24 97:22,25             | <b>merchant</b> 11:12      | 59:18 60:16,25            | <b>negotiated</b> 24:6     |
| 99:13,17                   | <b>merrill</b> 120:17      | 93:17 98:19 100:18        | <b>never</b> 19:23 48:3,6  |
| <b>market</b> 24:6 25:25   | <b>met</b> 6:13 18:20 68:6 | <b>morning</b> 5:21,22    | 49:8,17 53:25 54:4         |
| 30:20 31:1 33:20           | 76:20                      | <b>mortgage</b> 57:13     | 89:9,13 120:25             |
| 34:6 110:25                | <b>method</b> 52:13        | <b>move</b> 7:9           | 123:7 126:7                |
| <b>marketed</b> 65:19      | <b>michael</b> 118:8       | <b>moved</b> 80:23        | <b>new</b> 1:2,18,20 2:3,3 |
| <b>markets</b> 12:23 18:7  | <b>million</b> 27:18 34:17 | <b>mover</b> 38:10        | 2:8,8 5:5 6:25 7:10        |
| <b>married</b> 14:1,4,8    | 34:17 53:1,6,7             | <b>multiple</b> 71:16,19  | 11:13 14:9 21:18           |
| 68:4,9,15                  | 69:16 73:6 106:6           | 79:14 82:11               | 32:23 33:12 35:17          |
| <b>marry</b> 14:6          | 111:25 112:11,13           | <b>municipal</b> 71:4     | 35:20,21 36:15             |
| <b>marshall</b> 2:2        | 112:16,22,23,25            | <b>murray</b> 11:7,7,10   | 44:20,22 57:8,8            |
| <b>matter</b> 1:15 5:24    | <b>mind</b> 36:8           | 12:11,12,18,21            | 95:16,18 96:6              |
| 13:22 66:10 69:12          | <b>mine</b> 33:23 67:15    | 15:23 16:1,21 17:1        | 128:19 132:4               |
|                            | 117:18,19                  | 17:5 18:24 19:6,19        |                            |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[nine - parsippany]

Page 11

|   |  |  |   |
|---|--|--|---|
| <b>nine</b> 32:18 111:25<br>112:11,13,23,25<br><b>nineteen</b> 10:12 11:6<br>11:21<br><b>ninth</b> 21:23<br><b>notary</b> 1:19 4:14 5:5<br>5:12 128:19 132:4<br><b>note</b> 77:7<br><b>noted</b> 132:7<br><b>notes</b> 101:1,3<br><b>notice</b> 1:14 5:3<br><b>nought</b> 54:23<br><b>number</b> 6:11 64:10<br>72:15,16 73:8,8<br>99:21 100:8,9<br>101:14,22 108:13<br>109:12,18,20,21,22<br><b>numbers</b> 72:17 | <b>offices</b> 31:17,18<br><b>oh</b> 8:11 16:15 25:8<br>62:8 83:6 89:12,12<br>112:24 120:3<br>123:18 124:22,22<br><b>okay</b> 6:19 7:12 8:5<br>8:19 9:8,13 11:4<br>12:6,15,16 15:1,10<br>19:9,20 20:8,23<br>21:8,14 23:9,18,19<br>24:2 25:9,16 28:4<br>28:19 29:24 32:4<br>33:5 36:15 38:17<br>39:9,20 40:5,12,24<br>41:15 42:3 43:23<br>44:4,15 50:4 51:11<br>51:17 53:10 54:5<br>55:13,20 58:24<br>60:21 61:16 63:21<br>64:1 67:16 68:8,25<br>74:4,13 77:9 78:3<br>79:1,4 80:7 81:1<br>84:5,23 86:24 88:21<br>89:18 90:12 92:11<br>92:25 94:8 95:3<br>97:2,7 100:1,14<br>101:22 104:5,10<br>105:25 106:2,16,23<br>108:23 118:7,25<br>119:2,9,21 121:2,8<br>121:13 122:19<br>123:2,10,18,22<br>124:20 126:17<br>127:8<br><b>old</b> 6:7<br><b>once</b> 6:14 65:7,8<br>80:20 89:10<br><b>ones</b> 81:22 119:15<br><b>ongoing</b> 31:12,25<br><b>online</b> 110:16<br><b>open</b> 28:17 43:14<br>58:3,14,15,17 80:14<br><b>opened</b> 27:23 61:10<br><b>operate</b> 36:15 | <b>operated</b> 125:9<br><b>operation</b> 55:18<br>56:21,25 69:22,25<br>70:7 88:18 89:21<br>94:6<br><b>opportunity</b> 74:15<br>99:25<br><b>options</b> 32:22<br><b>oral</b> 5:1<br><b>order</b> 10:1 24:1<br><b>organization</b> 28:15<br>32:5 76:5 113:3<br><b>organizations</b> 40:16<br><b>organized</b> 35:17<br><b>original</b> 8:19 9:3,5<br>47:5<br><b>originals</b> 65:6<br><b>outline</b> 51:25 52:2<br><b>outset</b> 19:13<br><b>outside</b> 17:2 18:15<br>25:18<br><b>owe</b> 104:10<br><b>owned</b> 30:15,16,17<br>30:17 53:2,6 111:9<br>111:10 112:5,7,8,13<br>112:16 121:1<br><b>owner</b> 76:5 77:25<br><b>owners</b> 76:13,14<br><b>ownership</b> 37:5,8<br>67:1 73:18 74:1<br><b>owning</b> 120:13<br><b>owns</b> 66:11,12 | 33:1 34:1 35:1 36:1<br>37:1 38:1 39:1 40:1<br>41:1 42:1 43:1 44:1<br>45:1 46:1 47:1 48:1<br>49:1 50:1 51:1 52:1<br>53:1 54:1 55:1 56:1<br>57:1 58:1 59:1 60:1<br>61:1 62:1 63:1 64:1<br>65:1 66:1 67:1 68:1<br>69:1 70:1 71:1 72:1<br>73:1 74:1 75:1 76:1<br>77:1 78:1 79:1 80:1<br>81:1 82:1 83:1 84:1<br>85:1 86:1 87:1 88:1<br>89:1 90:1 91:1 92:1<br>93:1 94:1 95:1 96:1<br>97:1 98:1,23 99:1<br>100:1 101:1 102:1<br>103:1 104:1 105:1<br>106:1 107:1 108:1<br>109:1 110:1 111:1<br>112:1 113:1 114:1<br>115:1 116:1 117:1<br>118:1 119:1 120:1<br>121:1 122:1 123:1<br>124:1 125:1 126:1<br>127:1 128:1,9 129:1<br>130:1,2,3,5,6,8,9,11<br>130:12,14,15,17,18<br>130:20 131:1,2,3,5<br>131:6,8,9,11,12,14<br>131:15,17,18,20<br>132:1<br><b>pages</b> 3:8 91:13 92:2<br><b>paid</b> 22:15 23:8<br>53:10,16 57:13<br>61:10 83:25 85:15<br>85:16,19,21,24<br><b>park</b> 14:9 46:10<br>55:17<br><b>parking</b> 66:10 82:13<br>82:19<br><b>parsippany</b> 95:16<br>95:17 |
| <b>o</b>  | <b>o</b> 4:1<br><b>oath</b> 129:14<br><b>object</b> 51:6<br><b>objection</b> 20:13,22<br>35:9 36:24 38:11<br>42:20 66:2 71:23<br>74:5 77:6,7 92:18<br>96:12 103:17,25<br><b>objectionable</b> 74:25<br><b>objections</b> 4:8<br><b>obviously</b> 15:4<br>117:7<br><b>occasion</b> 43:23<br>70:17 82:1 89:19<br><b>occur</b> 68:17<br><b>occurred</b> 106:12<br><b>october</b> 3:7 91:1,12<br>94:3<br><b>odds</b> 107:10<br><b>offer</b> 129:13<br><b>offhand</b> 21:22<br><b>office</b> 21:18,20 54:3<br>54:25 55:3 56:18<br>87:4 95:15 116:3,23   | <b>p</b>   | <b>p</b>  |
|   | <b>p</b> 4:1<br><b>p.c.</b> 2:2<br><b>p.m.</b> 127:13<br><b>page</b> 2:1 3:1,3,6 4:1<br>5:1 6:1 7:1 8:1,15<br>9:1 10:1 11:1 12:1<br>13:1 14:1 15:1 16:1<br>17:1 18:1 19:1 20:1<br>21:1 22:1 23:1 24:1<br>25:1 26:1 27:1 28:1<br>29:1 30:1 31:1 32:1  |  |   |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[part - public]

Page 12

|   |  |  |   |
|---|--|--|---|
| <b>part</b> 7:14 10:11<br>116:8   | <b>party</b> 37:14 38:22<br>38:24 43:4 61:22   | <b>pieces</b> 16:6   | 77:25   |
| <b>partially</b> 33:23  | <b>pause</b> 124:16  | <b>pins</b> 117:10   | <b>principals</b> 15:22<br>110:18,20,22   |
| <b>participant</b> 50:24<br>61:7  | <b>pay</b> 23:22,24 83:19  | <b>place</b> 7:14 40:17<br>46:9 49:8,9 72:10<br>96:5 128:8 132:7       | <b>prior</b> 34:2 101:8<br>114:19   |
| <b>participants</b> 37:14   | <b>paying</b> 53:11  | <b>placed</b> 45:6   | <b>prison</b> 125:1   |
| <b>participate</b> 17:4<br>65:20 73:18 74:1<br>79:20 83:14 93:6   | <b>payments</b> 56:7   | <b>placements</b> 18:7<br>30:18 44:19,22                               | <b>private</b> 18:7 30:18<br>44:19,21 116:10  |
| <b>participating</b> 49:5   | <b>penalty</b> 129:5,6   | <b>places</b> 114:4  | <b>privately</b> 6:17 44:23<br>66:22  |
| <b>participation</b> 52:24<br>65:5 82:17 86:11  | <b>people</b> 9:21 18:6<br>32:2 35:15 37:10<br>117:2 120:15,16<br>126:2,3  | <b>plaintiff's</b> 3:7,9,10<br>3:12 91:9,10,22,23<br>97:22,23 99:11,15 | <b>privilege</b> 13:10,11   |
| <b>participants</b> 63:22<br>79:15,24 93:8  | <b>people's</b> 18:10,12   | <b>plaintiffs</b> 1:4 2:4  | <b>probably</b> 16:17,18<br>17:15 18:21 27:23<br>32:18 34:10 40:10<br>67:11 95:9 101:5<br>112:9 116:2 |
| <b>particular</b> 19:2<br>43:20 45:6 53:5<br>58:7 66:19 71:14<br>73:2 75:20 107:19<br>109:11 125:19   | <b>percentage</b> 16:14,17<br>53:7 61:8 67:1<br>83:19 97:12  | <b>plan</b> 49:3   | <b>problem</b> 8:1  |
| <b>particularly</b> 64:14<br>67:15  | <b>percentages</b> 60:19<br>61:2   | <b>plank</b> 1:17  | <b>proceedings</b> 124:16<br>132:6  |
| <b>parties</b> 4:3 65:5<br>80:11  | <b>perfectly</b> 124:2,6   | <b>plans</b> 81:16   | <b>process</b> 22:23 49:4,6<br>49:9 60:1  |
| <b>partner</b> 12:22 17:20<br>21:3 28:25 30:9<br>33:24  | <b>perform</b> 10:4  | <b>play</b> 44:7   | <b>produced</b> 5:3   |
| <b>partners</b> 1:7,9 9:15<br>9:17 17:19 18:22<br>22:11 28:13 29:16<br>30:4 32:5,9 33:5,10<br>33:11 35:16 36:9,21<br>37:5,18 40:19,23<br>44:10,11 46:12,13<br>47:11,19,25 48:24<br>49:13 50:2,6 51:3<br>51:20 52:1,20 53:13<br>54:16 56:12 57:22<br>63:19 69:22 79:10<br>83:4,24 85:5,7 86:8<br>86:16 87:15 88:17<br>89:20,23 90:2,14<br>93:14 94:5 96:1<br>111:1,3 | <b>period</b> 15:2 16:6,25<br>22:2 53:12 112:5,6<br>112:8  | <b>players</b> 52:24   | <b>product</b> 76:6 118:6   |
| <b>partnership</b> 28:10<br>83:6  | <b>perjury</b> 129:5,6   | <b>pled</b> 105:13 120:22  | <b>professional</b> 19:10<br>19:11 21:25 30:12<br>33:16 35:7  |
|   | <b>permitted</b> 39:4  | <b>pleaded</b> 105:21  | <b>professionally</b> 17:17<br>19:16  |
|   | <b>person</b> 23:13 39:13<br>85:12   | <b>please</b> 5:18 14:12<br>22:24 39:7 47:4<br>99:4,9 109:16 123:6     | <b>profit</b> 47:20 48:1<br>52:17 83:10,22 84:1<br>84:3   |
|   | <b>personal</b> 19:10 20:6<br>22:7 24:19,23 25:1<br>50:11 53:17,18<br>57:16 68:3 69:9,11<br>102:12 107:22<br>110:6 114:5 | <b>plural</b> 34:8   | <b>profiting</b> 47:19  |
|   | <b>personally</b> 20:5<br>32:16 84:17 128:4  | <b>point</b> 69:16 80:2<br>112:14                                      | <b>profits</b> 52:10,14   |
|   | <b>pessar</b> 117:13,14,15<br>117:21 118:19  | <b>points</b> 66:17  | <b>project</b> 79:25 83:5   |
|   | <b>phase</b> 75:15   | <b>police</b> 116:7  | <b>projects</b> 71:19   |
|   | <b>phonetic</b> 19:3<br>117:13 118:8,22  | <b>portfolio</b> 22:12 24:2<br>31:8 37:25 42:8                         | <b>promoting</b> 70:6   |
|   | <b>phrase</b> 75:15  | <b>portion</b> 47:7 83:1,9   | <b>property</b> 78:12<br>79:12 81:5   |
|   | <b>physical</b> 87:18  | <b>position</b> 12:20  | <b>proprietary</b> 83:15  |
|   | <b>picking</b> 38:5  | <b>possession</b> 95:4,9<br>108:1                                      | <b>prorated</b> 53:4  |
|   | <b>piece</b> 58:5 66:11<br>72:19,22 73:10<br>82:10   | <b>possible</b> 13:12 15:7<br>15:17 32:11                              | <b>prosecution</b> 15:14  |
|   |  | <b>possibly</b> 13:14<br>107:24  | <b>public</b> 1:19 4:14 5:5<br>5:12 45:1 49:24<br>128:19 132:4  |
|   |  | <b>potential</b> 83:4  |   |
|   |  | <b>presentation</b> 23:15  |   |
|   |  | <b>pretty</b> 70:2 115:19  |   |
|   |  | <b>prevent</b> 89:2  |   |
|   |  | <b>previous</b> 117:18   |   |
|   |  | <b>principal</b> 15:25 16:2<br>16:3 32:23 43:4                         |   |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400



[publicly - right]

Page 13

|  |   |   |  |
|--|---|---|--|
| <b>publicly</b> 45:1 110:21<br>110:23  | 82:2 90:16,19 92:15<br>97:13,20 98:18<br>100:15 102:6<br>104:20,21 107:17<br>129:3  | 113:19 114:1 116:2<br>118:5,18 119:22<br>125:3 126:16 127:3   | <b>remember</b> 8:14<br>10:13 19:1 26:9,19<br>27:22 29:12,13 30:4<br>36:1 37:9 46:6 47:1<br>47:2 48:19 58:19,20<br>64:21,22 65:1 71:13<br>71:14 72:10 80:7<br>83:8,11,20 89:7,15<br>93:2,14 98:14<br>107:21 109:10<br>117:4,9,10 |
| <b>purchase</b> 65:20,23<br>65:25 66:3,4 82:3  | <b>purchases</b> 22:21<br>27:11   | <b>receive</b> 86:9,11<br>122:13  | <b>received</b> 8:12 54:2<br>96:9 121:20   |
| <b>purchased</b> 52:22,23  | <b>purchasing</b> 66:8<br>79:19   | <b>receiving</b> 93:20  | <b>receptionist</b> 46:25<br>55:5  |
| <b>purchases</b> 22:21<br>27:11  | <b>rate</b> 12:24   | <b>recollection</b> 63:17<br>104:15   | <b>rent</b> 56:7 57:13   |
| <b>purpose</b> 25:23 47:24<br>70:5 102:5 109:6   | <b>read</b> 9:13 47:4,8<br>129:7,9  | <b>record</b> 5:19 6:1,4<br>7:17,21,24 34:21<br>45:15 49:25 91:18<br>92:13 99:7   | <b>repeat</b> 108:17   |
| <b>purposes</b> 51:25<br>66:17 79:11 117:21  | <b>reading</b> 64:16  | <b>recorded</b> 132:5   | <b>rephrase</b> 20:24 84:5   |
| <b>pursuant</b> 1:14 5:3   | <b>real</b> 30:22 44:18<br>64:23 65:18,19<br>66:21 71:8,10 72:12<br>75:20 76:1,23 77:12<br>77:20 79:5,6 99:22   | <b>records</b> 86:16 87:1<br>87:14,18,23 88:1,5<br>88:8,12,16,24 89:3<br>89:6   | <b>reporter</b> 1:19 5:4,11<br>132:3   |
| <b>pursuits</b> 26:12  | <b>really</b> 71:5 122:20   | <b>refer</b> 62:4   | <b>reporter's</b> 132:1  |
| <b>put</b> 18:6 32:6 44:7<br>52:23,25 53:2 62:4<br>64:24 71:8 72:12<br>73:9 80:17 82:24  | <b>realty</b> 76:8 77:24<br>79:5 93:2,7   | <b>reference</b> 93:13,19<br>101:8,22   | <b>represent</b> 5:24  |
| <b>putting</b> 67:2  | <b>reason</b> 66:25 130:3<br>130:4,6,7,9,10,12,13<br>130:15,16,18,19,21<br>131:3,4,6,7,9,10,12<br>131:13,15,16,18,19<br>131:21  | <b>references</b> 93:16   | <b>represented</b> 121:4   |
| <b>q</b>   | <b>reasons</b> 15:5   | <b>referred</b> 57:19 78:4  | <b>request</b> 71:1  |
| <b>quantify</b> 108:16   | <b>recall</b> 12:7 16:22,24<br>19:24 20:2,3,7<br>21:22,23 25:19<br>26:10 27:19 28:1,3<br>29:3 30:3 31:10,16<br>31:21 35:19 37:10<br>40:13 43:8 46:3,5<br>46:25 48:9,11 49:23<br>51:1 63:7,24,24<br>64:15 69:2,4,6 70:9<br>70:22 71:5 72:9,17<br>73:4 80:1 81:4,13<br>81:23 82:16 83:11<br>90:22,24 94:8,10,12<br>97:3 102:9 104:4,9<br>104:14 106:3,8<br>107:12,15 108:15<br>110:9 111:24 | <b>referring</b> 71:11  | <b>requested</b> 47:7  |
| <b>quantum</b> 48:17   |   | <b>reflect</b> 45:16  | <b>required</b> 36:19  |
| <b>question</b> 4:9 7:17<br>13:23 25:10 29:21<br>39:20 43:14 47:4,5<br>51:21 66:13 70:3<br>73:22 84:6 88:20<br>103:7 107:8 108:18<br>112:10,18 119:1,5<br>124:4,23 126:7 |   | <b>register</b> 36:17   | <b>research</b> 22:10,14<br>23:2,13 24:17  |
| <b>questions</b> 15:8<br>21:11 39:11 74:15<br>74:23 97:12 119:12   |   | <b>registered</b> 32:22   | <b>reserved</b> 4:9  |
| <b>quick</b> 119:12,14   |   | <b>regular</b> 56:19 57:3<br>123:12   | <b>residence</b> 61:20   |
| <b>quickly</b> 15:6  |   | <b>related</b> 107:4  | <b>respective</b> 4:3  |
| <b>r</b>   |   | <b>relating</b> 97:13   | <b>responsibility</b> 37:21  |
| <b>r</b> 4:1 12:12   |   | <b>relations</b> 19:21  | <b>responsible</b> 35:24<br>38:5 43:9 53:11<br>55:15 61:19 62:21<br>77:1,5   |
| <b>raised</b> 80:3   |   | <b>relationship</b> 22:1,4<br>22:6,7,8 24:19,24<br>25:1 31:13 58:16<br>67:17 68:2 105:9<br>107:11 117:20<br>118:13,14 119:6 | <b>reston</b> 111:16,18  |
| <b>rapidly</b> 15:17   |   | <b>relationships</b> 31:25  | <b>resulted</b> 104:7<br>105:10  |
| <b>rapillo</b> 1:3,3 2:5,5<br>5:24 67:7,10,11,14<br>67:19,23 68:2,10,22<br>69:8 70:5,11 71:22  |   | <b>relevance</b> 13:6,11  | <b>retained</b> 3:5  |
|  |   | <b>remain</b> 27:20<br>113:11,13  | <b>return</b> 71:3 107:14  |
|  |   |   | <b>returned</b> 22:19  |
|  |   |   | <b>returns</b> 94:25 95:1,6<br>95:7  |
|  |   |   | <b>reversed</b> 60:18  |
|  |   |   | <b>right</b> 10:21 11:25<br>13:3 14:1,22 20:10<br>21:21 24:11 25:13<br>27:16 28:8 30:7   |

VERITEXT REPORTING COMPANY

212-267-6868

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[right - statement]

Page 14

|  |   |   |  |
|--|---|---|--|
| 31:6 33:19 37:2,7<br>37:11,13 39:3 40:8<br>42:17 43:3,25 46:1<br>46:8 48:3 49:12<br>50:21 51:14,18,22<br>52:3,6,16 54:24<br>55:24 56:10,14 57:1<br>63:16 64:4,5 65:3<br>66:7,13 67:21 68:5<br>68:11 73:7,8,17,25<br>74:22 80:22 82:23<br>83:7,16,21 87:13<br>94:14,22 96:13,15<br>96:25 98:15 102:2<br>102:10,24 105:8<br>108:24 112:20<br>113:15 115:17<br>116:4 117:3 119:8<br>120:18 122:2,3,6<br>rise 103:15,20<br>road 1:18<br>robert 2:4<br>role 11:15<br>ron 75:24,25 76:1<br>76:20 77:25<br>rose 26:24 40:10,11<br>roseland 95:17,18<br>95:18<br>round 64:7<br>rubenstein 29:13,15<br>30:5,8,10<br>running 23:14 | saleswoman 17:7<br>saturation 80:2<br>save 74:14 108:8<br>129:10<br>saw 54:4 115:20<br>120:20 123:7<br>saying 23:16 25:12<br>39:18 65:2 73:7<br>76:16 78:7 126:4<br>says 98:24 107:6<br>school 6:21,22 10:8<br>10:12 54:18<br>schultz 1:19 5:4,11<br>132:3,16<br>se 58:9 82:10<br>sealing 4:4<br>seat 32:25 33:4,6,19<br>34:1,2,9<br>seats 34:6,7,8<br>second 57:14 97:19<br>124:13<br>section 120:10<br>secured 86:25 87:2<br>securities 11:7 22:9<br>33:17 39:14<br>security 6:11<br>see 13:6 84:2 89:15<br>99:3 116:1<br>seen 92:8 98:11<br>sell 24:9 49:11 72:16<br>73:11,14<br>selling 22:25<br>sense 51:7<br>sent 96:10,13 107:17<br>122:1,5,8,9,16<br>sentenced 102:21<br>separate 41:12 42:5<br>42:25 50:5 59:7<br>september 10:9 14:8<br>series 32:21,21,21<br>32:22,22 77:21<br>service 10:4,7 23:25<br>23:25 57:12,20<br>set 17:23 28:11<br>35:20 36:5 40:21 | 41:4,13,25 42:6,13<br>45:9,24 46:1,7 52:6<br>54:9 55:25 56:5<br>58:3,8 59:6 63:3,18<br>65:3,4,7,8,10 66:6<br>66:15,19 83:9 128:8<br>132:12<br>setting 35:25 48:23<br>62:24<br>seven 46:15,16<br>69:16<br>seventy 10:12 11:6<br>11:21<br>share 37:5 52:9<br>shares 24:3 111:25<br>112:1,11,14,16,22<br>sheet 129:1,12 130:1<br>131:1<br>short 38:4 39:10,22<br>59:3 106:21<br>show 64:3<br>sic 11:10 26:20<br>signatories 56:16<br>signature 130:23<br>131:23<br>signed 121:23<br>128:17 129:15<br>simon 26:16,23<br>simple 15:8 73:22<br>single 59:1 77:12<br>81:10 82:12,21<br>sir 6:19 35:2 97:19<br>101:1 102:14<br>sitting 35:5<br>six 10:7 34:13,17<br>98:22,25<br>sixty 6:8<br>skill 132:9<br>sky 57:6 70:15<br>social 6:11 25:14<br>socialize 25:17<br>soft 23:4,7<br>sold 22:10,14 23:22<br>27:6 34:2,4,9,11,12<br>34:16 53:8 | solely 76:23<br>solicit 68:21<br>somebody 8:25 24:1<br>61:3<br>son 46:19 55:4,5<br>soon 61:5<br>sorry 8:11 12:16<br>25:15 54:8 56:3<br>77:14 81:14 108:17<br>sound 62:9 91:3,4<br>source 48:20<br>sources 48:12 59:11<br>southern 1:2<br>space 55:16 82:18<br>86:25 87:2,4<br>spaces 66:10 82:13<br>82:15,20<br>speaking 90:16<br>117:8<br>specialist 31:2,3,4<br>specialty 30:19<br>specific 32:10 41:25<br>42:6,14 66:17,17<br>72:13,18 73:10,11<br>73:19<br>specifically 18:4<br>31:21 33:14 43:18<br>spell 26:18<br>spelling 19:3 117:13<br>118:8,23<br>spend 54:24<br>spoke 6:16<br>spread 24:5,7,13<br>stake 27:7,8<br>stakes 30:15<br>stanley 93:17<br>start 8:10 103:10<br>started 11:2 26:4<br>31:4<br>state 1:20 5:5,18<br>21:15 35:17,20,21<br>91:18 128:2,19<br>132:4<br>statement 99:23 |
| s  |   |   |  |
| s 4:1,1<br>safe 86:24<br>saint 71:12,17 72:8<br>75:20 76:2 78:2<br>salaries 53:17<br>salary 12:25<br>sale 85:24<br>sales 19:4 22:12<br>23:13 24:17<br>salesman 20:17<br>38:10,12   |   |   |  |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[states - trader]

Page 15

|   |  |  |   |
|---|--|--|---|
| <b>states</b> 1:2 128:6<br><b>stealing</b> 106:13<br><b>stenographer</b> 47:8<br><b>stenographically</b><br>132:6<br><b>step</b> 60:17 102:16<br><b>steps</b> 59:22<br><b>stick</b> 117:9<br><b>stipulated</b> 4:2,7,12<br><b>stock</b> 11:14 27:6<br>32:23,25 33:12,20<br>36:21,22,23 45:1,2<br>111:9,20 112:12,14<br><b>stocks</b> 30:17 39:4<br><b>stole</b> 105:22 117:1<br><b>stolen</b> 106:2<br><b>stop</b> 16:20<br><b>stories</b> 81:11,24<br><b>straight</b> 85:22<br><b>straighten</b> 77:10<br><b>stream</b> 47:15,17<br><b>street</b> 21:22<br><b>stripped</b> 39:15<br><b>structure</b> 74:22<br>76:11,14 78:13<br>81:13<br><b>structures</b> 81:20<br><b>stuyvesant</b> 6:22<br><b>sub</b> 42:12,13<br><b>subject</b> 127:4<br><b>sublet</b> 55:22<br><b>subscribed</b> 4:13,15<br>128:17<br><b>subscription</b> 121:20<br>123:6<br><b>subsequently</b> 68:9<br><b>subsidiaries</b> 42:11<br>44:14,16 124:10<br><b>subsidiary</b> 42:25<br>119:19 121:5<br><b>substantially</b> 121:17<br><b>succeeded</b> 123:19<br><b>succeeding</b> 123:24<br><b>success</b> 123:16 | <b>successor</b> 90:13<br><b>succinctly</b> 15:16<br><b>sudden</b> 61:4<br><b>sued</b> 9:21<br><b>suggest</b> 15:4<br><b>suggesting</b> 43:20<br>72:14 73:25 82:3<br><b>sum</b> 69:15 98:21<br><b>summer</b> 69:19<br><b>summertime</b> 10:13<br><b>sundry</b> 113:18<br><b>supermarket</b> 113:25<br><b>supposed</b> 52:21<br><b>sure</b> 7:25 8:6,23<br>26:9 28:22 31:14<br>34:10 41:2 49:23<br>63:14 70:1,2,2<br>81:17 89:22 93:3<br>98:13 111:19<br>115:19 119:13<br>122:16,20 125:15<br><b>susceptible</b> 74:23<br><b>sworn</b> 4:13,15 5:10<br>128:5<br><br><b>t</b><br><br><b>t</b> 4:1,1<br><b>take</b> 13:2,6 24:6<br>98:3 99:20 100:3<br>102:16 104:24<br>105:1 108:7,13<br>109:12<br><b>taken</b> 90:9 128:7<br>129:8<br><b>talked</b> 89:8,13<br>101:10,11 125:21<br><b>talking</b> 13:4,4 14:15<br>20:5 27:17 57:16<br>63:6 69:3 101:15<br>120:8<br><b>tall</b> 81:24<br><b>tax</b> 94:24 95:1,6,7<br><b>taxes</b> 49:19 94:14,17<br>94:21,23 95:4 | <b>technologist</b> 30:21<br><b>tell</b> 5:12 25:11 44:16<br>64:17 75:12 86:17<br>86:18,19 87:17<br>90:25 92:6 126:5,8<br><b>ten</b> 53:2,6,7 63:6,10<br>63:15 82:24 106:6<br><b>tend</b> 87:12<br><b>term</b> 18:3 38:3,4,12<br>38:14 41:21 51:7<br>110:10<br><b>terms</b> 80:3<br><b>testified</b> 5:14 106:15<br><b>testify</b> 101:24<br><b>testimony</b> 3:2 47:7<br><b>thank</b> 9:23 92:3<br><b>theater</b> 119:23,25<br>120:1,4,7,9,10,14,24<br>121:6<br><b>theirs</b> 76:8<br><b>thereabouts</b> 115:24<br><b>thing</b> 15:14 37:24<br>43:17 120:24,25<br>123:4,5,6<br><b>things</b> 30:16 62:24<br>65:21 125:6<br><b>think</b> 10:6 13:14<br>21:8 35:20 46:15<br>48:10 58:22 62:1,2<br>70:1 81:15,25 82:18<br>106:21,24 111:17<br>111:19 115:18<br><b>third</b> 16:12 26:23<br>37:14 38:22,24<br>57:14<br><b>thirty</b> 34:13<br><b>thought</b> 12:15 63:12<br>89:14 98:25 102:8<br>112:24<br><b>thousand</b> 16:23 24:3<br>26:6 34:13 49:22,24<br>53:3 69:5,21 91:1,2<br>92:14 94:3 96:8<br>109:5 | <b>three</b> 6:24 8:13,21<br>14:11 16:23 49:22<br>49:24 66:20 69:5<br>73:14,15 91:2 92:14<br>96:8 112:15<br><b>till</b> 10:9<br><b>time</b> 4:9 6:3 7:14,20<br>10:9,11 11:17,19<br>12:8 14:2 16:6<br>17:14,17 18:19,21<br>19:18,20 22:10,13<br>23:22 24:5 25:13,20<br>26:7,25 27:14,23<br>29:5 31:19 33:2<br>34:5,20 39:13 41:6<br>41:9,14 43:22 47:6<br>47:22 50:6 54:15,24<br>55:1 56:22 57:5<br>59:8 67:10 68:1,21<br>70:4,10 88:17,24<br>90:1,7 91:10 93:15<br>94:6 95:11,21,23<br>97:23 99:6,11,15<br>107:9,13 108:9<br>115:20 124:15<br>125:16,19,20 127:5<br>128:8 132:7<br><b>times</b> 68:20 73:14<br>73:15<br><b>title</b> 21:1 128:8<br><b>today</b> 92:9 94:18<br>115:21,22 126:10<br>126:21,25 127:6<br><b>told</b> 73:1 125:24<br><b>top</b> 83:11<br><b>total</b> 80:1,3 82:10<br><b>totally</b> 97:9 117:24<br><b>townhouses</b> 81:7,9<br><b>trade</b> 26:13 27:2<br>38:21,22 39:4,12,16<br>39:22<br><b>traded</b> 40:6,7 41:16<br>42:8 45:1 110:21,23<br><b>trader</b> 38:1 |
|---|--|--|---|

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[trades - won]

Page 16

|                             |                             |                            |                             |
|-----------------------------|-----------------------------|----------------------------|-----------------------------|
| <b>trades</b> 40:1          | 32:5 33:4 34:17             | <b>village</b> 78:2        | <b>weiss</b> 26:16,17,21,24 |
| <b>trading</b> 11:2,13,14   | 35:6 36:2 49:22,24          | <b>virginia</b> 111:16,16  | 27:10,21                    |
| 11:18 12:2,4,5              | 51:11 66:20 69:5,16         | 111:18                     | <b>went</b> 6:22,23 11:6    |
| 23:14 27:21 38:20           | 69:21 79:11,18              | <b>visit</b> 89:16         | 26:13 27:2,9 40:22          |
| 38:25 40:15 48:14           | 81:11 91:1,13 92:2          | <b>visited</b> 89:8,9,10   | 41:10 54:23 64:22           |
| 48:15,18 50:11              | 93:16 94:3 98:8,24          | <b>volume</b> 43:6         | 78:21 87:14 96:14           |
| 54:10,11,21 94:12           | 99:2,10 103:19,21           | <b>vs</b> 129:3            | 100:17,18 103:19            |
| 110:24 112:1                | 109:5                       | <b>w</b>                   | 113:17 114:7 125:6          |
| <b>tranche</b> 66:23        | <b>type</b> 22:4            | <b>wachovia</b> 93:18,21   | 126:10,13                   |
| <b>transactions</b> 19:13   | <b>typically</b> 23:10      | 93:24 96:16                | <b>whereof</b> 132:11       |
| 41:25 42:7 105:16           | <b>u</b>                    | <b>waived</b> 4:5          | <b>why's</b> 99:2           |
| 105:20                      | <b>u</b> 4:1                | <b>wanna</b> 24:14 28:24   | <b>wife</b> 17:1 50:24      |
| <b>transcript</b> 128:6,10  | <b>u.s.</b> 94:19           | 43:17 71:8 84:5            | 67:20,24 68:18 95:5         |
| 129:7 132:8                 | <b>umbrella</b> 50:15       | 103:6 104:3 108:17         | 95:25                       |
| <b>transfer</b> 3:7,9,10,12 | <b>understand</b> 15:15     | 120:16                     | <b>winded</b> 39:8          |
| 91:11 92:14 94:2            | 38:17 39:18 51:15           | <b>want</b> 15:5 22:22     | <b>wire</b> 122:8           |
| 97:19,24 98:17              | 51:16 59:3 65:2,14          | 41:21 61:3 75:5,7,9        | <b>wished</b> 121:19        |
| 99:12,16 101:9,14           | 67:4 74:18,19 75:12         | 92:6 99:23 106:16          | <b>withdraw</b> 125:17      |
| 101:15 102:5,7              | 84:2,4 88:20 101:25         | <b>wanted</b> 28:17 32:3   | <b>witness</b> 3:3 5:9 7:16 |
| 108:25 109:12               | <b>understanding</b>        | 80:12                      | 7:25 8:5,7,11 13:9          |
| 110:3                       | 129:13                      | <b>waverly</b> 1:9,10 9:18 | 13:13,18 15:4,10            |
| <b>transferred</b> 93:13    | <b>united</b> 1:2           | 9:19 64:20 65:12,13        | 18:25 19:7 20:19,23         |
| 96:8 110:5 113:8            | <b>units</b> 75:19 78:11,17 | 65:13,13 71:14             | 23:6 25:6 35:11             |
| <b>treated</b> 114:5,13     | 79:12 81:2 82:12,20         | 72:19,23 73:1,19           | 38:13,15 39:24 41:8         |
| <b>trial</b> 1:13 4:10      | <b>university</b> 113:3     | 74:2,6 75:15,16            | 41:18,23 42:1,9,12          |
| <b>trident</b> 76:8 77:20   | <b>unrelated</b> 117:24     | 76:9,16,18 77:3,11         | 43:1 45:16 51:22            |
| 77:24 79:5 93:2,7           | 118:2                       | 77:13,15 78:5,7,8          | 59:16,19,23 60:3,6          |
| <b>true</b> 114:19,23       | <b>use</b> 96:1             | 78:10,12,16 79:7,15        | 60:11,17,23 61:1,15         |
| 124:9 128:9 129:9           | <b>uses</b> 51:6            | 79:16,20,20,24             | 64:3 74:9,12 75:11          |
| 132:8                       | <b>v</b>                    | 80:12,13,19,20,20          | 77:13,17,23 78:6,14         |
| <b>trust</b> 93:18 96:22,23 | <b>value</b> 48:17          | 80:23,24,25 81:3           | 78:18,21 81:17              |
| 122:9                       | <b>various</b> 113:17       | 82:8 83:14,23 84:12        | 82:16 84:9,13,16,19         |
| <b>truth</b> 5:12,13,13     | 117:1                       | 85:3 86:3 88:8,12          | 84:22,24 85:4,8,11          |
| 75:8                        | <b>vault</b> 86:25          | 90:18 92:17 102:9          | 85:16,20 86:1,4,12          |
| <b>try</b> 15:10,16 59:2    | <b>vcampus</b> 110:11,13    | 113:22 120:8,11            | 91:6 92:4,20 96:22          |
| <b>trying</b> 10:6 18:25    | 110:14,16,19,23             | 121:9,11,12,16,20          | 98:9 100:12,23              |
| 29:12 37:9 71:25            | 111:2,15,21 113:2           | 121:25 122:14,24           | 102:2 105:14,18,22          |
| 75:13 78:1 89:7             | 113:21 119:18,19            | 123:3,16,19 124:2,6        | 105:24 106:16,23            |
| 106:24                      | <b>vehicle</b> 42:15 43:21  | 125:7                      | 108:11,21 109:13            |
| <b>turn</b> 55:18           | 44:2 45:6 52:13             | <b>way</b> 17:5 32:11 34:2 | 109:23 114:6,10,14          |
| <b>twelve</b> 106:3 112:22  | 58:4 59:6 66:9              | 36:18 105:3 113:4          | 114:17,20,22,25             |
| <b>twenty</b> 12:19 95:21   | 75:18 76:10                 | 115:7 116:19               | 115:3 119:13                |
| <b>two</b> 3:8 6:8 8:14     | <b>vehicles</b> 38:7        | 121:16 122:21              | 132:11                      |
| 16:23,23 17:18 26:6         |                             |                            | <b>won</b> 69:12            |
| 26:6 28:16 31:13            |                             |                            |                             |

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[words - zero]

Page 17

|                             |                         |
|-----------------------------|-------------------------|
| <b>words</b> 106:11         | 35:20,21 36:15          |
| <b>work</b> 18:14 21:5      | 44:20,22 57:8           |
| 54:3,20 55:10,13,16         | 128:19 132:4            |
| 62:22                       | <b>young</b> 62:17      |
| <b>worked</b> 10:11         | <b>z</b>                |
| <b>working</b> 7:14 16:20   | <b>zachman</b> 118:8    |
| 19:18 30:25 56:6            | <b>zero</b> 41:10,18,19 |
| 125:9                       | 44:13                   |
| <b>workings</b> 21:6        |                         |
| <b>works</b> 67:5           |                         |
| <b>worry</b> 21:13          |                         |
| <b>worth</b> 6:24 27:5      |                         |
| 53:3                        |                         |
| <b>write</b> 14:16          |                         |
| <b>written</b> 52:2         |                         |
| <b>wrote</b> 100:20 101:3   |                         |
| <b>x</b>                    |                         |
| <b>x</b> 3:1 61:3,5 72:15   |                         |
| 72:16 73:9,10               |                         |
| <b>y</b>                    |                         |
| <b>yeah</b> 7:25 20:23      |                         |
| 23:1,3 26:22 40:17          |                         |
| 44:15 46:14 55:8            |                         |
| 62:1,13 66:14 71:2          |                         |
| 71:20 78:6 83:25            |                         |
| 84:9,15 92:12 94:7          |                         |
| 95:2 96:18 101:11           |                         |
| 101:21 106:19               |                         |
| 110:15 115:14,18            |                         |
| 116:21 119:4 120:5          |                         |
| <b>year</b> 7:6 10:23 12:9  |                         |
| 13:25 26:5 48:8,9           |                         |
| 49:23 56:20,24              |                         |
| 68:20 94:2,9,15             |                         |
| <b>years</b> 6:24 10:3      |                         |
| 12:10,19 13:21              |                         |
| 15:24,25 16:2,4,8           |                         |
| 24:21 33:4 67:23            |                         |
| 95:21 112:12                |                         |
| <b>yonkers</b> 14:9         |                         |
| <b>york</b> 1:2,18,20 2:3,3 |                         |
| 2:8,8 5:5 6:25 7:10         |                         |
| 11:13 14:9 21:18            |                         |
| 32:23 33:12 35:18           |                         |

VERITEXT REPORTING COMPANY

212-267-6868

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